

**Recommendations of the
Oklahoma Children and Juvenile Law
Reform Committee**



**Representative Kris Steele
Senator Harry Coates**

Co-Chairs

December 22, 2008

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The Oklahoma Children and Juvenile Law Reform Committee was originally created in 2006 by HB 2840. In 2008, the term of the committee was extended through June 2009 by HB 2530.

Statutory authority of the committee:

Section 7008-1.3 of Title 10 of the Oklahoma Statutes provides:

“A. The purposes of the Oklahoma Children and Juvenile Law Reform Committee shall be to conduct a systematic review and study of all laws and procedures in this title and prepare a recommended draft to reclassify, update, reform and recodify the statutes. The duties of the Committee in preparing recommendations shall be as follows:

1. To consolidate similar statutes;
2. To renumber children and juvenile law statutes;
3. To repeal obsolete or duplicate statutes or any statutes which have been declared unconstitutional by court decision;
4. To create a recommended Children’s Code Article in this title;
5. To incorporate into the Children’s Code Article as many existing statutes relating to children and juvenile law procedure found throughout the Oklahoma Statutes as is practicable;
6. To update statutory references within each section relating to children and juvenile law procedure;
7. To clarify and update existing statutory language;
8. To recodify those sections of law which relate to children and juvenile law procedure when the move will improve the location, use, application and appropriateness of the section; and
9. To perform any other act necessary to complete the purposes of the Committee.

B. The Oklahoma Children and Juvenile Law Reform Committee shall be responsible for drafting recommended legislation in accordance with the current legislative drafting procedures...”

Committee membership:

(Includes original and current appointments)

Representative Kris Steele

Representative Susan Winchester

Senator Harry Coates

Professor Daniel Boudreau

Kathryn Boyle Brewer, Oklahoma County District Attorney’s Office

Dorothy Brown, Office of Juvenile Affairs (OJA)

Jane Brown, Oklahoma County District Attorney’s Office

Judge Doris Fransein

Jonna Geitgey, Department of Human Services (DHS)

Jim Goble, OJA

Professor Alex Long

Eunice McDowell

Judge Gary Miller

Judge Mark Moore

Catherine O’Leary, DHS

Anne Roberts

Linda Smith, DHS

Professor Robert Spector

Judge Roger Stuart
Anne Bullock Sublett
Judge Mike Warren

Committee staff:

Sarah Brune, Staff Attorney
Marcia Goff, Senior Research Analyst
Grace Shelton, Staff Attorney
Brad Wolgamott, Senior Research Analyst

Committee Recommendations:

The committee met on November 21, 2008, to consider and vote on recommendations from the Children's Code Subcommittee and the Juvenile Code Subcommittee. The following are recommendations of the committee.

Children's Code

Print Date: November 18, 2008

EDITOR'S NOTE: This is the "Master Index" showing where the named statutes, currently indexed in the Oklahoma Children's Code, OCARPA and FOCUS (the Foster Care Act), have been reorganized and moved to the new Oklahoma Children's Code (OCC), or to other Titles or deleted & not moved. The index for the new OCC is called the "Reverse Index" and is a separate document.

**OKLAHOMA CHILDREN'S CODE
(Master Index)**

CURRENT OKLAHOMA CHILDREN'S CODE STATUTES

§10-7001-1.1. Short title – Contents of Code.

(Moved to Article 1 General Provisions / Definitions)

§10-7001-1.2. Liberal construction of act.

(Moved to Article 1 General Provisions / Definitions)

§10-7001-1.3. Definitions.

(Moved to Article 1 General Provisions / Definitions)

§10 7002-1.1. Jurisdiction - Emergency Temporary Order or Interlocutory Relief - Transfer of Proceedings

(Moved to Article 4, Part 1 Jurisdiction)

§ 7002-1.2. Action for Divorce, Alimony without Divorce, Annulment, Custody or Appointment of Guardian - Evidence of Child Abuse or Neglect - Investigation - Protective Custody Orders - Attorney Appointed for Child

(Moved to Article 4, Part 1 Jurisdiction)

§7002-1.3 Jurisdiction of Judge Presiding Over a Deprived Action

(Stricken & incorporated into §7002-1.1 which is in Article 4, Part 1 Jurisdiction)

§10-7002-2.1. Responsibility for deprived children.

(Moved to Article 7 – Persons/Agencies Receiving Custody)

§10-7002-2.2. Director to serve as legal guardian.

(Moved to Article 8 – Miscellaneous Provisions)

§10-7002-3.1. Enforcement of Code.

(Moved to Article 1 – General Provisions)

§ 7003-1.1. Preliminary Inquiry or Investigation - Findings - Determinations

(Moved to Article 2 – Reporting & Investigations)

**§10-7003-2.1. Child taken into custody prior to filing of petition -
Emergency custody - At-risk infants.**

(Moved to Article 4; Part 2 – Protective & Emergency Custody)

**§10-7003-2.2. Emergency medical treatment or mental health care -
Emergency ex parte order - Notice and hearing.**

(Stricken due to new medical treatment law being written)

**§10-7003-2.3. Authorization of medical or mental health treatment -
Consent - Hearing - Responsibility for medical expenses.**

(Stricken due to new medical treatment law being written)

**§10-7003-2.4. Notification of parent, legal guardian or custodian -
Emergency custody hearing - Duration of emergency custody orders -
Scheduling priority for children in emergency custody - Court
determinations**

(Moved to Article 4, Part 2 Protective & Emergency Custody)

**§10-7003-2.5. Immunity from liability for authorizing medical treatment or
mental health evaluation or treatment.**

(Moved to Article 3 Medical & Behavioral Health Treatment)

§10-7003-3.1. Petitions.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel &
Others)

§ 7003-3.2. Repealed by Laws 1998, c. 421, § 34, emerg. eff. June 11,1998.

§10-7003-3.3. Amendment of petition.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel &
Others)

§10-7003-3.4. Summons - Contents - Service - Taking child into custody.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel &
Others)

§10-7003-3.5. Service of summons.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel &
Others)

§10 7003-3.6. Failure to Appear - Contempt - Warrants.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel &
Others)

§10-7003-3.7. Appointment of counsel - Guardians ad litem - Court-appointed special advocates - Applicability of section.

(Moved to Article 4, Part 3 – Petition, Summons, Appointment of Counsel & Others)

§10-7003-3.8. Jury trial.

(Moved to 4, Part 5 Conduct of Hearings)

§10-7003-4.1. Conduct of hearings.

(Moved to 4, Part 5 Conduct of Hearings)

§10 7003-4.2. Applicability of Section - Admissibility of Child Statement Recorded before Proceedings Begin

(Moved to 4, Part 5 Conduct of Hearings)

§10-7003-4.3. Taking testimony of child age 12 or under in room other than courtroom - Recording.

(Moved to 4, Part 5 Conduct of Hearings)

§10-7003-4.4. Allegations of petition not supported by evidence.

(Moved to Article 4, Part 6 Adjudication Hearing)

§10-7003-4.5. Order of adjudication finding child to be deprived.

(Moved to Article 4, Part 6 Adjudication Hearing)

§10-7003-4.6. Returning child to home (Reasonable efforts not required).

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-4.7. Petition for termination by district attorney.

(Moved to Article 4, Part 9 Termination of Parental Rights)

§10-7003-5.1. Dispositional hearings - Additional reports or evidence.

(Stricken due to being consolidated in to current §7003-5.5 which was moved to Article 4, Part 7 Dispositional Hearings)

§10 7003-5.2. Examination of Child by Physician, Psychiatrist or Psychologist - Orders

(Moved to Article 4, Part 7 Dispositional Hearings)

§10-7003-5.3. Individual treatment and service plan.

(Moved to Article 4, Part 7 Dispositional Hearings)

§10-7003-5.4. Information to accompany child placed outside child's home.

(Moved to Article 7 Persons & Agencies Receiving Custody)

D§10-7003-5.4a. Movement of child in custody of Department of Human Services - Notification - Court approval.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.5. Disposition orders.

(Amended and broken into stand alone sections that were moved to Article 4, Part 7 Dispositional Hearings & §7003-5.5(l) was moved to Article 4, Part 9 Termination of Parental Rights)

§10-7003-5.5a. Period of supervision.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6. Review of case.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6a. Review hearing - Reports - Child's access to counsel.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6b. Supported guardianship and long-term or permanent foster care.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7003-5.6d. Permanency hearing.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6e. Reports.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6f. Agreements by birth relatives.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-5.6g. Repealed by Laws 2004, c. 452, § 5, eff. Nov. 1, 2004.

§10-7003-5.6h. Permanency hearings - Eligibility of foster parent to adopt.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-6.1. Modification of decrees or orders.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-6.2. Appeals.

(§7003-6.2(A)&(B) moved to Article 5 Appeals; §7003-6.2(C) broken into two stand alone sections & moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-6.2A. Hearing to determine release of child from state custody.

(Moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hearings)

§10-7003-6.3. Use of initial for child's surname.

(Moved to Article 5 Appeals)

§10-7003-6.4. Time for filing petition - Completion of record - Briefing schedule.

(Moved to Article 5 Appeals)

§10-7003-7.1. Persons or agencies receiving custody - Rights and duties.

(Moved to Article 7 Persons or Agencies Receiving Custody – Rights & Duties)

§10-7003-7.2. Children becoming unmanageable and uncontrollable.

(Deleted as being obsolete & inapplicable to current law)

§10-7003-8.1. Religious faith of parents or child - Permanency planning - Placement with foster parent or other person in home convicted of felony.

(Moved to Article 4, Part 7 – Dispositional Hearings)

§10-7003-8.2. Mileage and witness fees.

(Moved to Article 8 – Miscellaneous Provisions)

§10-7003-8.3. Penalties.

(Moved to Article 8 – Miscellaneous Provisions)

§10-7003-8.4. District attorney or child's attorney to act as petitioner.

(Moved to Article 4, Part 5 – Conduct of Hearings)

§10-7003-8.5. Immediate assumption of custody to protect child's health or welfare.

(Moved to Article 4, Part 2 Protective & Emergency Custody)

§10-7003-8.6. Referees.

(Moved to Article 8 – Miscellaneous Provisions)

§10-7003-8.7. Parents to reimburse costs for care of deprived child.

(Moved to Article 4, Part 7 Dispositional Hearings)

§10-7003-8.8. Deprived child – Paternity – Support.

(Moved to Article 4, Part 7 Dispositional Hearings)

§10-7004-1.1. Additional duties and powers of Department.

(Moved to Article 7 Persons or Agencies Receiving Custody – Rights & Duties)

§10-7004-1.2. Management information system for programs and services related to children, youth and families.

(Deleted because the section's requirements have been met)

§10-7004-1.3. Program planning and monitoring.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-1.4. Mental health services for children in need of treatment - Placement disputes - Arbitrator.
(Deleted as no longer needed)

§10-7004-1.5. Kinship Foster Care Program.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-1.6. Independent Living Act - Purpose.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-1.7. Pilot program to serve children at high risk of abuse and neglect.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-1.8. Performance-based incentive compensation program for child welfare specialists.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-2.1. Community-based services and care for deprived children - Grants and contracts.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-3.1. Administration of children's facilities.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-3.2. Rules, policies and procedures regarding children in Department custody.
(Moved to Article 7 Persons or Agencies Receiving Custody – Rights & Duties)

§10-7004-3.3. Use of physical force - Mechanical restraints.
(Deleted due to being incorporated into current §7004-3.2(B)(11) in Article 7 Persons or Agencies Receiving Custody – Rights & Duties)

§10-7004-3.4. Office of Client Advocacy.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7004-3.5. Provision of shelter and care to minor mothers who are victims of domestic abuse.
(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7005-1.1. Court to make and keep records - Definitions.
(Moved to Article 6 Children's Records)

§7005-1.2. Confidential records.

(Moved to Article 6 Children's Records)

§10-7005-1.3. Inspection of records without court order - Penalties for unlawful disclosure.

(Moved to Article 6 Children's Records)

§10-7005-1.4. Disclosure of Department of Human Services records without court order - Confidentiality - Violations.

(Deleted & merged with current §7005-1.3 in Article 6 Children's Records)

§10-7005-1.5. Department of Human Services records - Release to Indian tribes.

(Deleted & merged with current §7005-1.3 in Article 6 Children's Records)

§10-7005-1.6. Applicability of the Oklahoma Minor Identification Act.

(Moved to Article 8 Miscellaneous Provisions)

§10-7005-1.7. Promulgation of rules implementing federal Child Abuse Prevention and Treatment Act.

(Deleted as unnecessary)

§10-7005-1.8. Maintenance of records.

(Moved to Article 6 Children's Records)

§10-7005-1.9. Disclosure of certain information in cases of death or near-death of a child.

(Moved to Article 6 Children's Records)

§10-7006-1.1. Termination of parental rights in certain situations.

(Moved to Article 4, Part 9 Termination of Parental Rights)

§10-7006-1.2. Notice of hearing to terminate parental rights.

(Moved to Article 4, Part 9 Termination of Parental Rights)

§10-7006-1.3. Effect of termination of parental rights.

(Moved to Article 4, Part 9 Termination of Parental Rights)

§10-7006-1.4. Custody with authority to consent to adoption after termination of parental rights.

(Deleted due to being in conflict with current §7003-5.5(l)(3))

§10-7006-1.5. Action to adopt not to be combined with action to terminate parental rights.

(Deleted as unnecessary)

§10-7006-1.6. Deprived children in custody 15 of last 22 months.
(Deleted because is an ASFA requirement that has been met)

§10-7007-1.7. Membership.

§10-7007-1.8. Purposes - Report.

(These sections deals with the Judicial Coordination Advisory Study Panel shall consist of the following fourteen (14) members & it appears its purpose & function has expired by operation of law and can be deleted.)

§10-7007-1.9. Task Force on Reactive Attachment Disorder in Children – Membership - Duties.

(No action taken on this section. Not sure if it is still in effect or not. If still active the section can be moved to Article 9, Programs, Contracts, etc..)

§10-7008-1.1. Establishment of committee – Cooperation of state entities and employees.

§10-7008-1.2. Appointment of committee members – Subcommittees – Vacancies.

§10-7008-1.3. Committee purpose – Duties – Final draft of recommended Children’s Code Article.

§10-7008-1.4. Appointment of cochairs – Election of officers – Meetings – Reimbursement of expenses.

§10-7008-1.5. Progress report.

§10-7008-1.6. Staff assistance from Legislature.

(Editor’s Note: These boxed sections are Oklahoma Children and Juvenile Law Reform Committee & not sure where these sections should go.)

CURRENT OCARPA (REPORTING ACT) STATUTES

§10-7101. Short title.

(Moved to Article 2 Reporting & Investigations)

§10-7102. Public policy - Protection of children - Definitions.

(Moved to Article 2 Reporting & Investigations)

§10-7103. Reporting of abuse, neglect or birth of chemically-dependent child - Retaliation by employer - Contents of report - Violations - Spiritual treatment of child through prayer.

(Moved to Article 2 Reporting & Investigations)

§10-7104. Report of criminally inflicted injuries.

(Moved to Article 2 Reporting & Investigations)

§10-7104.1. Judicial authority to request investigation.

(Moved to Article 2 Reporting & Investigations)

§10-7105. Immunity from civil and criminal liability - Presumption.

(Moved to Article 2 Reporting & Investigations)

§10-7105.1. Priority of investigations or assessments - Community-based programs.

(Moved to Article 2 Reporting & Investigations; Part B moved to Article 9 Programs, Contracts & Administrative Provisions)

§10 7106. Prompt Investigation of Child Abuse or Neglect - Determinations - Temporary Restraining Order

(Moved to Article 2 Reporting & Investigations)

§10-7107. Confidentiality - Violation - Penalty.

(Moved to Article 6 Children's Records)

§10-7108. Notice to person being investigated – Notice of family assessment.

(Moved to Article 2 Reporting & Investigations)

§10-7109. Disclosure of information - Transmission of records.

(Moved to Article 2 Reporting & Investigations)

§10-7110. Multidisciplinary teams - Intervention in reports of abuse or neglect - Duties.

(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7110.1. Child Abuse Multidisciplinary Account.

(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7110.2. Allocation of monies in Child Abuse Multidisciplinary Account.

(Moved to Article 9 – Programs, Contracts & Administrative Provisions)

§10-7111. Information system for maintenance of reports of child abuse, sexual abuse and neglect.

(Moved to Article 2 Reporting & Investigations)

§10-7112. Appointment of representatives for child.

(Deleted because it needs to be moved to Title 21 of the Criminal Code)

§10-7113. Admissibility of evidence.

(Moved to Article 4, Part 5 Conduct of Hearings)

§10-7114. Payment of costs by defendant upon conviction.
(Deleted because it needs to be moved to Title 21 of the Criminal Code)

§10-7115. Child abuse - Child neglect - Child sexual abuse - Child sexual exploitation - Enabling - Penalties.
(Deleted because it needs to be moved to Title 21 of the Criminal Code)

§10-7115.1. Relinquishment of child 7 days of age or younger to medical services provider or child rescuer.
(Moved to Article 2 Reporting & Investigations)

CURRENT FOSTER CARE STATUTES

§10-7201. Short title.
(Deleted – the relevant portions of these statutes have been merged with the OCC)

§10-7202. Legislative intent.
(Portions deleted & portions amended & moved to Legislative Intent section of Article 1 & to stand alone sections in Article 7 Persons/Agencies Receiving Custody)

§10-7202.1. Renumbered as § 21.3 of this title by Laws 1999, c. 396, § 30, emerg. eff. June 10, 1999.

§10 7202.2. Renumbered as § 21.4 of this title by Laws 1999, c. 396, § 30, emerg. eff. June 10, 1999.

§10 7202.3. Voluntary relinquishment of physical custody Presumption.
(Deleted because this statute belongs in either Title 30 or Title 43 & not in the OCC)

§10 7202.4. Placement of child in foster home.
(Deleted as unnecessary since it is covered in the child care licensing laws)

§10-7203. Definitions.
(Deleted since all definitions were merged into OCC)

§10-7203.1. Parental substitute authority - Grant to foster parent.
(Deletion. Term deleted from definitions and some of this language is being incorporated into legislative intent section.)

§10-7203.2. Parental substitute authority - Purpose - Custody orders deemed to grant.

(Deletion. Term deleted from definitions and some of this language is being incorporated into legislative intent section.)

§10-7204. Department of Human Services and Department of Juvenile Justice - Duties.

(Deletion. Some of this language is being incorporated into legislative intent section. Sub-section C. Amended & moved to Article 7 – Agencies/Persons Receiving Custody)

§10-7204.1. Allegations against employees of Department or child-placing agency by foster parent.

(Moved to Article 9 – Programs, etc...)

§10-7205. Foster placements - License or authorization.

(Moved to Article 7 Persons or Agencies Receiving Custody)

§10-7206. Written contract - Information provided to foster parents - Supervision by child-placing agency.

(Amended & Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7206.1. Statement of foster parent's rights.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§7206.2 [Blank]

§10-7206.3. Previous foster parent a preferred placement option.

(Moved to Article 7 Persons, Agencies Receiving Custody)

§10-7207. Grounds for determination of placement.

(Portions deleted as not applying to OCC & portions moved to Article 4 Part 7 & Article 7)

§10-7208. Preplacement visits - Removal from foster care placement.

(Amended & moved to Article 4, Part 8 Post-Dispositional, Placement & Misc. Hrgs)

§10-7209. Foster parent eligibility assessment - Criminal history investigation - Treatment and service plan - Periodic medical examinations.

(Moved to Article 7 Agencies & Persons Receiving Custody w/ minor amendments)

§10-7209.1. Repealed by Laws 1999, c. 396, § 31, emerg. eff. June 10, 1999.

§10-7210. Recruitment of foster placement from child's relatives or from families of same minority racial or ethnic heritage.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7211. Foster parent associations - State agencies to cooperate and promote development.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7212. Foster parent training and continuing education.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7213. Grievance procedures for foster parents.

(Moved to Article 9 Programs, Contracts & Administrative Provisions)

§10-7214. Voluntary foster care placement.

(Moved to Article 7 Persons & Agencies Receiving Custody)

§ 7215. [BLANK]

§ 7216. [BLANK]

§ 7217. [BLANK]

§10-7218. Abandonment of child in voluntary placement.

(Moved to Article 2 Reporting & Investigations)

§ 7219. [BLANK]

§10-7220. Grandparents - Legislative findings and declaration - Informational and educational program - Distribution of informational brochures.

(Moved to Article 9 Programs, Contracts, etc...)

§10-7221. Limitation of times foster child is moved - Legislative intent.

(Amended & moved to Article 7 Persons & Agencies Receiving Custody)

CURRENT GENERAL PROVISIONS (FRONT SECTIONS)

§ 4. Support and education

(Deleted per Dr. Spector's recommendation)

§ 5. Grandparental visitation rights

(This section needs to be moved to Title 43 as do all statutes governing private actions, per Dr. Spector's recommendation)

§ 5A. Visitation rights of siblings

(Deleted per Dr. Spector's recommendation; appears to be unconstitutional as currently written. Sibling visitation is covered in the OCC.)

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

(Deleted per Dr. Spector's recommendation)

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

(Retain – see Dr. Spector's comments)

§ 6. Custody of child born out of wedlock

(Deleted per Dr. Spector's recommendation)

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

(Although Dr. Spector recommended this statute be deleted, the OCC subcommittee would like to retain this statute "as is" so that Oklahoma is on the record, along with many other states, as denouncing the terms "illegitimate" & "bastard" as descriptors of children.)

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

(Deleted per Dr. Spector's recommendation)

§ 8. Parent without control over child's property

(Deleted per Dr. Spector's recommendation)

§ 9. Abuse of parental authority--Civil action

(Deleted per Dr. Spector's recommendation)

§ 10. Cessation of parent's authority

(Deleted per Dr. Spector's recommendation)

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

(Deleted per Dr. Spector's recommendation)

§ 12. Maintenance of poor persons by parents--Limitations--Promise of adult child to pay for necessities

(Deleted per Dr. Spector's recommendation)

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

(Deleted per Dr. Spector's recommendation)

§ 14. Compensation for support of child

(Deleted per Dr. Spector's recommendation)

§ 15. Support of stepchildren

(Amended per Dr. Spector's recommendation; needs to be moved to Title 43)

§ 16. Services and support after majority

(Deleted per Dr. Spector's recommendation)

§ 17. Relinquishment of rights by parent

(Deleted per Dr. Spector's recommendation)

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

(Per Dr. Spector's comments, this statute should be retained, but may need to be moved to Title 12.)

§ 18. Payment of minor's wages

(Deleted per Dr. Spector's recommendation)

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

(Per Dr. Spector's comments, this statute should be retained, but may need to be moved to Title 43 to precede 43 O.S. §112.3)

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

(Per Dr. Spector's comments, this statute should be retained, but may need to be moved to Title 76.)

§ 21.1. Custody or guardianship--Order of preference--Death of custodial parent--Preference of child--Evidence of domestic abuse--Registered sex offenders

(Deleted & re-written & it needs to be moved to Title 43 per Dr. Spector's recommendation)

§ 21.2. Definitions;

§ 21.3. Right to custody;

§ 21.4. Authority to surrender, assign, relinquish or otherwise transfer;

§ 21.5. Permanent custody to adult relative within third degree;

§ 21.6. Relatives--Right to authorize medical care and dental care--Good faith reliance--Relative caregiver's authorization affidavit

(All of these sections deleted per Dr. Spector's recommendation & comments that they are duplicative of provisions in the OCC)

§7209 (E)(F)(G)(H) & (I)(1) MOVED HERE TO BE A STAND ALONE STATUTE AS AMENDED.

(This statute was previously in the Foster Care Act, §7201, et. seq., & most of those sections have been merged into the OCC, however, the OCC sub-committee believes the referenced statute needs to be a stand alone section, in Title 10, but not in the OCC)

§10-22.1. Legislative findings and intent – Foster care by grandparents or other relative.

(Retain & leave where it is)

§10-22.2. Short title – Purpose – Comprehensive strategic plan – Information database – Family resource assistance – Partnerships – Brochure.

(Retain & leave where it is)

§10 23. National Youth Administration Construction and operation of building jointly by county, city and fair association or board.

(Deleted by the OCC Sub-committee as being obsolete & having no applicability to the Children's Code)

§10-24. Appointment of counsel - Responsibility of Oklahoma Indigent Defense System - Compensation.

(Retain & leave where it is)

§10-24.1. Appointment of volunteer attorneys for indigent children not entitled to representation by Indigent Defense System.

(Retain & leave where it is as amended)

Print Date: November 18, 2008

EDITOR'S NOTE: This Reverse Index shows where the current statutes now found in OCARPA, FOCUS & the OCC have been moved to one body of law, the newly organized Oklahoma Children's Code.

**OKLAHOMA CHILDREN'S CODE
(Reverse Index)**

Article 1 General Provisions / Definitions

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(Editor's note: Not sure what the status of this section is whether it is still in effect or not. If still active the section can be moved to Article 9, Programs, contracts, etc..)

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(Editor's note: These boxed sections are Oklahoma Children and Juvenile Law Reform Committee & not sure where these sections should go.)

OKLAHOMA CHILDREN'S CODE
ARTICLE 1 – GENERAL PROVISIONS / DEFINITIONS

§10-7001-1.1. Short title - Subsequent enactments - Chapter, article and part captions.

- A. Chapter 70 of this title shall be known and may be cited as the "Oklahoma Children's Code".
- B. All statutes hereinafter enacted and codified in Chapter 70 of this title shall be considered and deemed part of the Oklahoma Children's Code.
- C. Chapter, article and part captions are part of the Oklahoma Children's Code, but shall not be deemed to govern, limit or in any manner affect the scope, meaning or intent of the provisions of any article or part of this Code.
- D. The provisions of this chapter shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code, Chapter 75 of this title.

§10-7001-1.2. Liberal construction of act.

- A. ~~It is the intent of the Legislature that Chapter 70 of this title shall be liberally construed, to the end that its purpose may be carried out.~~
- B. ~~The paramount consideration in all proceedings concerning a child alleged or found to be deprived is the health and safety and the best interests of the child. The purpose of the laws relating to children alleged or found to be deprived is to:~~
- ~~1. Secure for each such child, the permanency, care and guidance as will best serve the spiritual, emotional, mental and physical health, safety and welfare of the child;~~
 - ~~2. Provide expeditious and timely judicial and agency procedures which protect the health, safety and welfare of the child;~~
 - ~~3. Preserve, unify and strengthen the child's family ties whenever possible in the child's best interests and for the health and safety of the child;~~
 - ~~4. Except as otherwise specified by the Oklahoma Children's Code, provide that reasonable efforts are made to prevent or eliminate the need for removing the child from the home, or to make it possible for the child to safely return to the family's home;~~
 - ~~5. Recognize that the right to family integrity, preservation or reunification is limited by the right of children to be protected from abuse and neglect;~~
 - ~~6. Remove the child from the custody of the parents of the child when the child's health, safety or welfare is in danger or the child's safety cannot be adequately safeguarded without removal;~~
 - ~~7. Recognize that permanency is in the best interests of the child;~~
 - ~~8. Ensure that, in the best interests of the child, when family rehabilitation and reunification are not possible or are determined not to be necessary pursuant to the Oklahoma Children's Code, the child will be expeditiously placed with an adoptive family or in another permanent living arrangement; and~~

Comment [DoHS1]: This section on legislative intent has been re-written in its entirety to be consistent with state and federal constitutions, statutes and case law.

~~9. Assure adequate and appropriate care and treatment for the child, with the use of the least restrictive method of treatment or placement consistent with the treatment or placement needs of the child.~~

A. For the purposes of the Children's Code, the Legislature recognizes that:

1. Parents have a natural, legal and moral right, as well as a duty, to care for and support their children and such rights are protected by state and federal laws as well as the Constitution. To that end, it is presumed that a child's best interests are ordinarily served by leaving the child in the custody of the parents, who are expected to have the strongest bond of love and affection and to be best able to provide a child those needed qualities that make a child's life safe and secure. Nevertheless, this presumption may be rebutted where there is evidence of abuse and neglect or threat of harm.

2. A child has a right to be raised by its mother and father as well as a right to be raised free from physical and emotional abuse or neglect. When it is necessary to remove a child from a parent, the child is entitled to a permanent home and to be placed in the least restrictive environment to meet the needs of the child.

3. Because the state has an interest in its present and future citizens as well as a duty to protect those who because of their age are unable to protect themselves, it is the policy of the state to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health safety and welfare of such children. To this end, where family circumstances threaten a child's safety, the state's interest in the child's welfare takes precedence over the natural right and authority of the parent to the extent that it is necessary to protect the child and assure that its best interests are met.

B. It is the intent of the legislature for the Children's Code to provide the foundation and process for state intervention into the parent-child relationship whenever the circumstances of a family threaten a child's safety and to properly balance the triumvirate of interests heretofore stated. To this end, it is the purpose of the laws relating to children alleged or found to be deprived to:

1. Intervene in the family only when necessary to protect a child from harm or threatened harm.

2. Provide expeditious and timely judicial and agency procedures for the protection of the child.

3. Preserve, unify and strengthen the child's family ties whenever possible when in the best interests of the child to do so.

4. Recognize that the right to family integrity, preservation or reunification is limited by the right of the child to be protected from abuse and neglect.

5. Make reasonable efforts to prevent or eliminate the need for the removal of a child from the home and make reasonable efforts to reunite the child with in the home unless otherwise prescribed by the Oklahoma Children's Code.

6. Recognize that permanency is in the best interests of the child.

7. Ensure that when family rehabilitation and reunification are not possible, that the child will be placed in an adoptive home or other permanent living arrangement in a timely fashion.

8. Secure for each child, the permanency, care, education and guidance as will best serve the spiritual, emotional, mental and physical health, safety and welfare of the child;

C. Whenever it is necessary for a child to be placed outside the home pursuant to the Oklahoma Children's Code, it is the intent of the legislature that:

1. Each child shall be assured the care, guidance and supervision in a permanent home or foster home which will serve the best interests of the child including but not limited to the development of the child's moral, emotional, spiritual, mental, social, educational, and physical well being.

2. When a child is placed in foster care, the foster parent shall be allowed to consider the child as part of the family.

3. Whenever possible siblings shall be placed together and when they cannot, efforts shall be made to preserve the relationships through visitation and other methods of communication.

4. Permanent placement is achieved as soon as possible.

5. The foster parent has a recognizable interest in the familial relationship that the foster parent establishes with a foster child and shall therefore be considered an essential participant with regard to decisions related to the care, supervision, guidance, rearing and other foster care services to the child.

D. It is the intent of the legislature that the paramount consideration in all proceedings within the Oklahoma Children's Code is the best interests of the child.

§ _____ NEW LAW – FOSTER CHILD'S BILL OF RIGHTS

Comment [DoHS2]: Editor's Note:
Still working on this section

§10-7002-3.1. Enforcement of Code.

A. The Attorney General, the district attorney of the appropriate district 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 the Oklahoma Children's Code, or to enforce any of the laws of this state protecting or applying in any way to a child removed from the custody of the lawful parent of the child by a disposition order of the court.

B. 1. A petition for termination of parental rights may be filed by the district attorney or the attorney of a child alleged to be or adjudicated deprived.

2. A petition for termination of parental rights shall be filed by the district attorney for those petitions required to be filed pursuant to the provisions of Section 45 _____ of this act.

3. If a child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 45- _____ of this act.

§10-7001-1.3. Definitions.

A. When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. ~~"Abandoned infant" means a child who is twenty four (24) months of age or younger whose parent:~~

~~a. has willfully left the infant alone or in the care of another who is not the parent of the infant without identifying the infant or furnishing any means or methods of identification;~~

~~b. has willfully left the infant alone or in the care of another who is not the parent of the infant and expressed a willful intent by words, actions, or omissions not to return for the infant;~~

~~c. has knowingly placed or knowingly allowed the infant be placed in or remain in conditions or surroundings that posed or constituted a serious danger to the health and safety of the infant thereby demonstrating wanton disregard for the child's well-being;~~

~~d. is a father, or a putative father if the infant was born out of wedlock, and:
(1) if an infant is less than ninety (90) days of age, who fails to show that he has exercised proper parental rights and responsibilities with regard to the infant, including, but not limited to, contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy;~~

~~(2) (a) if an infant is older than ninety (90) days but less than fourteen (14) months of age, who fails to show that he has exercised proper parental rights and responsibilities with regard to the infant, including, but not limited to, contributing to the support of the infant to the extent of his financial ability, which may include contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy.~~

Comment [DoHS3]: The term "Abandoned Infant" has been deleted in order that the terms "Abandonment" and "Infant" may be defined separately.

~~(b) Failure to contribute to the support of the mother during her term of pregnancy, pursuant to this subdivision, shall not in and of itself be grounds for termination of the parental rights of the father or putative father, or~~

~~(3) (a) if the infant is fourteen (14) months of age or older, who fails to show that he has exercised proper parental rights and responsibilities with regard to the infant, including, but not limited to, contributing to the support of the infant to the extent of his financial ability.~~

~~(b) Pursuant to this subdivision, failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for termination of the parental rights of the father or putative father.~~

~~In any case where a father, or a putative father of an infant born out of wedlock, claims that prior to the receipt of notice of the hearing provided for in Section 7006-1.2 of this title he had been specifically denied knowledge of the infant or denied the opportunity to exercise parental rights and responsibilities with regard to the infant, such father or putative father shall prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a child or made sufficient attempts to exercise parental rights and responsibilities with regard to the infant prior to the receipt of notice, or~~

~~e. has not established and/or maintained substantial and positive relationship with the infant during the six (6) months immediately prior to out-of-home placement or the six (6) continuous months while in out-of-home placement, and has not made meaningful efforts to gain or regain custody of the infant, despite being given the opportunity to do so. For purposes of this section, "establish and/or maintain substantial and positive relationship" includes but is not limited to:~~

~~(1) frequent and regular contact with the infant through frequent and regular visitation or frequent and regular communication to or with the infant, and~~

~~(2) the exercise of parental rights and responsibilities.~~

~~Incidental or token visits, communications or contributions shall not be sufficient to establish and/or maintain a substantial and positive relationship with the infant;~~

XX. "Abandonment" means:

a. The willful intent by words, actions or omissions not to return for a child; or,

b. The failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant; or,

c. The failure to respond to notice of deprived proceedings.

Comment [DoHS4]: New term.

XX. "Abuse" means harm or threatened harm or failure to protect from 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, but not limited to, non-accidental physical or mental injury, sexual abuse or sexual exploitation.

a. "Harm or threatened harm to a child's health or safety" means any real or threatened physical mental or emotional injury or damage to the body or mind that is not accidental

Comment [DoHS5]: The term "Abuse" and sub-parts "a", "b" & "c" were merged in from OCARPA definitions & modified.

including, but not limited to sexual abuse, sexual exploitation, neglect or dependency.

- b. "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.
- c. "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.

Provided, however, that nothing contained in this Act shall prohibit any parent, teacher or other person from using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling.

Comment [DoHS6]: Editor's Note: Added from 21 O.S. §844 in re: parental discipline.

4. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Part 3 of Article III of this Code are supported by the evidence and whether a child should be adjudged to be a ward of the court by the court as provided by Section XXXX of this title.

Comment [DoHS7]: It was decided that types of hearings will be not be defined in the definitions, but referenced to the substantive section in Title 10 that will contain the definition.

XX. "Adjudication" means a finding by the court that the allegations in a petition alleging that a child is deprived are supported by a preponderance of the evidence.

3. "Assessment" means the same as defined within the term "Safety assessment and analysis" in this Section means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat to a child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:
a. an evaluation of the child's safety, and
b. a determination regarding the family's need for services;

Comment [DoHS8]: This term is defined and encompassed under the term "Safety assessment & analysis" & is being cross-referenced to that term.

XX. "Behavioral Health" means mental health, substance abuse, or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment."

Comment [DoHS9]: Editor's Note: New term that replaces the terms "mental health" & "substance abuse"..

4. "Child" means any unmarried person under eighteen (18) years of age except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

Comment [DoHS10]: Amended to include all unmarried children under age 18.

XX "Child advocacy center" means a center and the multidisciplinary child abuse team of which it is a member that is accredited by the National Children's Alliance or that is completing a sixth year of reaccreditation. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows: a. nonurban centers in districts with child populations that are less than sixty thousand (60,000), b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and c. urban centers in Oklahoma and Tulsa Counties.

Comment [DoHS11]: Term moved here from OCARPA (Reporting Act).

~~5. "Minor in need of treatment" means a child in need of mental health or substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;~~

Comment [DoHS12]: Moved to the "M" section of the alphabet & amended.

6. "Child with a disability" 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;

7. "Child-placing agency" means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements; and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act;

~~8. "Chronic abuse or chronic neglect of a child" means a pattern of physical or sexual abuse or neglect which is repeated or continuing;~~

Comment [DoHS13]: This term was stricken in favor of the terms heinous & shocking abuse & neglect being defined separately below.

XX "Commission" means the Commission for Human Services;

Comment [DoHS14]: Moved here from OCARPA.

9. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

XX. "Concurrent permanency planning " means, when indicated, the implementation of two plans for a child entering foster care. One plan focuses on reuniting the parent and child; the other seeks to find a permanent out-of-home placement for the child with both plans being pursued simultaneously.

10. "Court-appointed special advocate" or "CASA" means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and ~~who has volunteered to be available for appointment by the court to serve as an officer of the court when appointed by the court, serves as an officer of the court in the capacity as a guardian ad litem, pursuant to the provisions of Section 7003-3.7 of this title, to represent the best interests of any deprived child or child alleged to be deprived over whom the district court exercises jurisdiction, until discharged by the court;~~

Comment [DoHS15]: Editor's Note: Clarification that when the term "guardian ad litem" is used, the GAL may be a CASA

11. "Court-appointed special advocate program" means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent, not-for-profit corporation or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem, ~~to represent the best interests of a deprived child or a child alleged to be deprived in a case for which a deprived petition has been filed;~~

XX. "Custodian" means an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. As used in this title, the term "custodian" shall not mean the Department of Human Services;

Comment [DoHS16]: New definition for an old term; added for clarification.

12. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

13. "Department" means the Oklahoma Department of Human Services;

Comment [DoHS17]: Clean-up.

XX. "Dependency" means a child who is homeless or without proper care or guardianship through no fault of his parent, legal guardian or custodian.

Comment [DoHS18]: An old term which is a term of art used in terms defining abuse & neglect & for that reason needs to be included in our definitions.

14. "Deprived child" means a child:

- a. who is for any reason destitute, homeless, or abandoned;
- 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, abuse, cruelty, or depravity on the part of the child's parents, legal guardian, or other person responsible for the child's health or welfare;~~
- c. who has been abused, neglected or is dependent;
- d. whose home is an unfit place for the child by reason of depravity on the part of the child's parent, legal guardian, or other person responsible for the child's health or welfare;

Comment [DoHS19]: Definition has been simplified to eliminate multiple components being contained in a sub-section.

- ee. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment;

Comment [DoHS20]: A significant amendment was the deletion of "s" from the parents. This will allow the case to move more quickly in dealing with the offending parent, but keeping the non-offending parent involved voluntarily.

As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk ~~for future exposure to such substances~~ of harm or threatened harm to a child's health or safety;

Comment [DoHS21]: Amended to clarify that harm or threatened harm is a necessary element of deprivation under this sub-section.

- ef. who is a child with a disability 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 the child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment shall be necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child;
- eg. who is, due to improper parental care and guardianship, is absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance;
- fh. whose parent, legal guardian or custodian for good cause desires to be relieved of custody, ~~or~~

- gi. who has been born to a parent whose parental rights to another child have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the parent to the other child, have not been corrected; or

whose parent, legal guardian or custodian has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in an deprived proceeding;

Comment [DoHS22]: New language deals with a parent who is part of a current deprived case who is causing or allowing abuse or neglect of other children.

Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, legal guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

Nothing contained in this paragraph 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.

~~The phrase "dependent and neglected" shall be deemed to mean deprived;~~

Comment [DoHS23]: Deletion due to being defined separately.

15. ~~"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 by the court as provided by Section XXXX of this title.;~~

Comment [DoHS24]: Rather than defining the meaning of the hearing, we will instead reference to the substantive statutory provision.

16. "Emergency custody" means the custody of a child prior to adjudication of the child following issuance of an order of the district court pursuant to Section 7003-2-4 ~~XXXX~~ of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 7003-2-4 ~~XXXX~~ of this title;

17. "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 used for the lawful custody and treatment of children;

18. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child in foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent;

19. ~~"Foster child"~~ means a child placed in foster placement;

Comment [DoHS25]: Deletion approved as unnecessary.

20. ~~"Foster family"~~ means all persons living in a foster family home, other than a foster child;

Comment [DoHS26]: Deletion approved as unnecessary.

21. ~~"Foster family home"~~ means the private residence of a foster family ~~which parent who~~ provides foster care services to a child. Such term shall include a nonkinship foster family home, ~~a specialized foster home~~, a therapeutic foster family home, or the home of a relative or other kinship care home;

Comment [DoHS27]: Approved as amended. Specialized FHs are DDSD FHs caring for DDSD children & adults. Not needed in this definition.

22. ~~"Foster parent"~~ means any individual maintaining a foster family home, who is responsible for the care, supervision, guidance and rearing of and other foster care services provided to a foster child;

Comment [DoHS28]: Deletion approved as unnecessary.

23. ~~"Foster placement"~~ means a child placing agency or foster family home providing foster care services;

Comment [DoHS29]: Deletion approved as unnecessary.

XX "Foster parent eligibility assessment" includes a criminal background investigation, including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Office of Juvenile Affairs or any child-placing agency pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

Comment [DoHS30]: Added from FC Act – Approved as amended.

24. ~~"Guardian ad litem"~~ means a person appointed by the court to protect the best interests of a child pursuant to the provisions of ~~Section 7003-3.7 XXXX~~ of this title in a particular case before the court having those duties and responsibilities set forth in such section. The term "guardian ad litem" shall refer to a court appointed special advocate as well as to any other person appointed pursuant to Section XXXX of this title to serve as a guardian ad litem;

Comment [DoHS31]: Approved as amended – 09-14-07.

Comment [DoHS32]: The section referenced in this definition will change in the renumbering process.

XX. "Guardian ad litem of the estate of the child" means a person appointed by the court to protect the property interests of a child pursuant to Section XXXX of this title.

25. ~~"Group home"~~ means a residential facility housing ~~no more than twelve children with a program which emphasizes family-style living in a homelike environment. Such group home may also offer a program within the community to meet the specialized treatment needs of its residents licensed by the Department to provide full-time care and community-based services for more than five but fewer than thirteen children;~~

Comment [DoHS33]: Amended to be consistent with child care licensing standards.

XX. "Harm or threatened harm to a child's health or safety" means any real or threatened physical, mental or emotional injury or damage to the body or mind that is not accidental including, but not limited to sexual abuse, sexual exploitation, neglect or dependency.

Comment [DoHS34]: New term moved here from OCARPA & amended.

XX. "Heinous and shocking abuse" includes, but is not limited to, the following aggravated circumstances:

Comment [DoHS35]: New term, parts of which are taken from definitions in OCARPA. These terms are used in the termination of parental rights (TPR) statutes and thus need to be specifically defined.

a. Physical abuse that results in serious bodily, mental or emotional injury;

i) Serious bodily injury means injury that involves:

(a) A substantial risk of death; or

(b) Extreme physical pain; or

(c) Protracted disfigurement; or

(d) A loss or impairment of the function of a body member, organ or mental faculty; or

(e) An injury to an internal or external organ or the body;
or

(f) A bone fracture; or

(g) Sexual abuse or sexual exploitation

(h) Chronic abuse, including, but not limited to physical, emotional or sexual abuse or sexual exploitation which is repeated or continuing;

(i) Torture that includes, but is not limited to inflicting, participating or assisting in inflicting;

(a) intense physical or emotional pain upon a child repeatedly over a period of time;

(b) for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel or prurient desires of the perpetrator or another person. or,

j. any other similar aggravated circumstance.

XX. Heinous and shocking neglect includes, but is not limited to:

a. chronic neglect that includes, but is not limited to a persistent pattern of family functioning in which the caregiver has not sustained and/or met the basic needs of a child which results in harm to the child;

b. neglect that has resulted in a diagnosis of the child as failure to thrive;

c. an act or failure to act by a parent that results in a child's near death or death of a sibling, serious physical or emotional harm, sexual abuse, sexual exploitation or presents an imminent risk of serious harm to a child; or

d. Any other similar aggravating circumstance.

26. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, such features as minimal direct staff supervision, and the provision of supportive services to assist children with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

~~57XX. "Treatment and Individualized service plan" means a document written pursuant to Section 7003-5-3 XXXX of this title that has the same meaning as "service plan" or "treatment plan" where those terms are used in the Oklahoma Children's Code;~~

Comment [DoHS36]: The new language regarding "service plan" was added to avoid having to use the more cumbersome phrase "individualized service plan" over & over.

~~XX. "Infant" means a child who is twelve (12) months of age or younger.~~

Comment [DoHS37]: New definition.

27. "Institution" means a residential facility offering care and treatment for more than twenty residents;

28. ~~"Investigation" means the same as defined within the term "Safety assessment and analysis" in this Section means an approach utilized action taken by the Department to respond in response to a reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, constitute a serious and immediate threat to a child's health or safety. An investigation includes, but is not limited to, the following elements:~~
~~a. an evaluation of the child's safety,~~
~~b. a determination whether or not child abuse or neglect occurred, and~~
~~c. a determination regarding the family's need for prevention and intervention-related services~~

Comment [DoHS38]: This term is defined and encompassed under the term "Safety assessment & analysis" & is being cross-referenced to that term.

30. ~~"Kinship guardianship means a judicially created relationship between a child and a kinship relation of the child established pursuant to the provisions of Section 7003-5.5 of this title a permanent guardianship as defined in this Section;~~

31. "Kinship relation" or "kinship relationship" means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child, provided however, in cases where the Indian Child Welfare Act applies, the definitions contained in Title 25, Section 1903 of the United States Code shall control over this definition;

Comment [DoHS39]: ICWA exception has been added.

32. "Mental health facility" means a mental health or substance abuse treatment facility as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

~~XX. "Minor" means a child;~~

Comment [DoHS40]: Approved as a new definition.

33. "Multidisciplinary child abuse team" means any freestanding team established pursuant to Section 7440 ~~XXXX~~ of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse. For purposes of this definition, "freestanding" means a team not used by a child advocacy center for its accreditation;

Comment [DoHS41]: Amendments incorporate the current definition in OCARPA with the current OCC definition.

34. "Near death" means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

XX. "Neglect" means any of the following:

Comment [DoHS42]: This definition was merged from OCARPA and amended.

- a. The failure or omission to provide any of the following:
 - i. Adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene or appropriate education;
 - ii. Medical, dental or mental health care;
 - iii. Supervision or appropriate caretakers;
 - iv. Special care made necessary by the physical or mental condition of the child;
- b. The failure or omission to protect a child from exposure to any of the following:
 - i. Domestic violence;
 - ii. The use, possession, sale or manufacture of illegal drugs;
 - iii. Illegal activities;
 - iv. Sexual acts or materials that are not age appropriate.
- c. Abandonment.

~~36. "Out of home placement" means a placement, other than a placement in the home of the parent, legal guardian or custodian from whose custody the court has removed the child;~~

Comment [DoHS43]: ASFA does not require the states to define this term. Term being deleted as being unnecessary.

~~37. "Permanency hearing" means a hearing by the court to determine whether a child is to be returned to the child's home or whether other permanent placement will be sought within a specific time frame for the child as provided by Section _____ of this title.;~~

Comment [DoHS44]: Rather than defining the meaning of the hearing, we will instead reference to the substantive statutory provision.

XX. "Permanent guardianship" means a judicially created relationship between a child, a kinship relation of the child or other adult established pursuant to the provisions of Section XXXX of this title.

~~38. "Permanent custody" means a court ordered custody of an adjudicated deprived child whose parent's' parental rights have been terminated the court-ordered custody of an adjudicated deprived child when a parent-child relationship~~

Comment [DoHS45]: Clean-up.

no longer exists due to termination of parental rights or due to the death of a parent or parents.

39. "Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; 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 as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

40. "Protective custody" means custody of a child taken pursuant to ~~Section 7003-2.1 of this title~~ by a law enforcement officer or designated employee of the court without a court order;

41. a. "Putative father" means an alleged father as that term is defined in Section 7700-1-2 of this title ~~the father of a child:~~

~~(1) born out of wedlock, or~~

~~(2) whose mother was married to another person at the time of the birth of such child or within ten (10) months prior to the birth of the child.~~

b. "Putative father" includes, but is not limited to:

~~(1) a man who has acknowledged or claims paternity of the child,~~

~~(2) a man named as the father by the mother of the child, or~~

~~(3) any man alleged to have engaged in sexual intercourse with the mother during a possible time of conception;~~

42. "Relative" means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child ~~within the third degree of consanguinity;~~

43. "~~Residential child care center~~ facility" means a ~~twenty-four-hours-a-day twenty-four-hour residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents where children live together with or are supervised by adults who are not their parents or relatives;~~

44. "~~Reasonable efforts~~" means ~~the reasonable exercise of diligence and care, with regard to a child who is in out-of-home placement, or who is at imminent risk of being harmed, to:~~

~~a. refer to, arrange for, or develop reasonable supportive and rehabilitative services for the family of such child that are required both to prevent unnecessary placement of the child outside of the child's home and to foster, whenever appropriate, the safe reunification of such child with the child's family, or~~

~~b. place a child who cannot be returned home into a permanent placement;~~

Comment [CO46]: Clean-up for consistency with the UPA.

Comment [DoHS47]: Amended to conform to child care licensing statutes.

Comment [DoHS48]: Deleted as unnecessary.

~~45. a. "Residual parental rights and responsibilities" means those rights and responsibilities that remain with the parent:~~

Comment [DoHS49]: Deleted as unnecessary.

~~(1) after transfer of legal custody of the child, other than in connection with an action for termination of parental rights, a relinquishment of parental rights, a consent to termination of parental rights or an adoption, or~~

~~(2) when a guardianship or kinship guardianship is established for the child.~~

~~b. Residual parental rights and responsibilities may be limited or restricted as determined by the court, and include, but are not limited to:~~

~~(1) the right of visitation,~~

~~(2) the right to consent to adoption,~~

~~(3) the responsibility for support of and costs of medical care for the child,~~

~~(4) the right to determine the religious faith of the child, and~~

~~(5) the right to consent to termination of parental rights and the right to permanently relinquish parental rights.~~

~~c. Residual parental rights and responsibilities shall not include the right to consent to the marriage of a minor pursuant to the provisions of Section 3 of Title 43 of the Oklahoma Statutes;~~

~~46. "Responsible adult" for purposes of the release of a child from protective custody, means a stepparent, foster parent, a relative of the child who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the child in another person's absence who is eighteen (18) years of age or older;~~

Comment [DoHS50]: Deleted as unnecessary.

~~XX. "Review hearing" means a hearing by the court as provided by Section XXXX of this title.;~~

Comment [DoHS51]: Rather than defining the meaning of the hearing, we will instead reference to the substantive statutory provision.

~~XX. "Safety Assessment and Analysis" means action taken by the Department in response to a report of alleged child abuse or neglect that will include an assessment or investigation based upon degree of risk to a child.~~

Comment [DoHS52]: New term that will encompass the current terms "Assessment" & "Investigation". The terms "Assessment" & "Investigation" are being made a part of the definition of "Safety Analysis" or similar term to be consistent with the new practice model being implemented by the Department.

a. "Assessment" means a written response to a report of alleged child abuse or neglect where, following a risk analysis, the Department determines there is a low to moderate safety risk or no safety risk to the child and a referral to community services is appropriate.

b. "Investigation" means a written response to a report of alleged child abuse or neglect that constitutes a serious and immediate threat to a child's health or safety where, following a risk analysis, results in one of the following findings:

i. "Substantiated – Court intervention recommended" means a report that 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;

- ii. "Substantiated – Services recommended" means a report that 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;
- iii. "Unsubstantiated - Services recommended" means a report in which a child protective services worker, after an investigation, determines 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 child abuse and neglect prevention and intervention-related services;
- iv. "Ruled Out" means a report in which a child protective services worker, after an investigation, determines that no child abuse or neglect has occurred.

47. "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 juvenile 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;

48. ~~"Serious bodily injury" means a bodily injury that involves:~~
~~a. substantial risk of death,~~
~~b. extreme physical pain,~~
~~c. protracted and obvious disfigurement, or~~
~~d. protracted loss or impairment of the function of a bodily member, organ or mental faculty;~~

Comment [DoHS53]: Definition is being deleted because it is captured under the definitions of abuse/neglect or heinous & shocking abuse/neglect.

49. ~~"Serious danger to the health and safety" means that without the intervention of another person or agency, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;~~

Comment [DoHS54]: See above comment.

50. "Sibling" means a biologically or legally related brother or sister of a child;

51. ~~"Specialized foster care" means foster care provided to a child in a specialized foster home or agency-contracted home which:~~
~~a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,~~
~~b. is monitored by the Division, and~~

Comment [DoHS55]: Approved as amended.

c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

52. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

53. "Therapeutic foster family home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

54. ~~"Torture" means to inflict:~~

- ~~a. intense emotional or psychological anguish to or suffering by a child, or~~
- ~~b. physical pain for the purpose of coercing or terrorizing a child;~~

Comment [DoHS56]: Captured in definition of heinous & shocking abuse.

55. ~~"Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juvenile delinquents;~~

Comment [DoHS57]: Deletion approved since we no longer have training schools

56. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. The program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program;

and

58. "Voluntary foster care placement" means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child's parent, legal guardian or custodian.

~~B. Unless the context otherwise requires, the terms defined in the Oklahoma Child Abuse Reporting and Prevention Act and the Oklahoma Foster Care and Out-of-Home Placement Act shall have the same meaning when used in the Oklahoma Children's Code.~~

Comment [DoHS58]: This section deleted as unnecessary since definitions from OCARPA & FC Act have been merged w/ OCC.

Editor's Note: Please note that pages 33-37 deal with criminal offenses & penalties and need to be re-numbered & moved over to the criminal code.

**OKLAHOMA CHILDREN'S CODE
ARTICLE 2 – REPORTING & INVESTIGATIONS**

~~§10-7101. Short title.~~

- ~~A. Chapter 71 of Title 10 of the Oklahoma Statutes shall be known and may be cited as the "Oklahoma Child Abuse Reporting and Prevention Act".~~
~~B. All statutes hereinafter enacted and codified in Chapter 71 of Title 10 of the Oklahoma Statutes shall be considered and deemed part of the Oklahoma Child Abuse Reporting and Prevention Act.~~

Comment [DoHS1]: Deleted by OCARPA sub-committee. This section is unnecessary since OCARPA will become part of the Oklahoma Children's Code (OCC).

~~§10-7102. Public policy – Protection of children – Definitions.~~

- ~~A. 1. It is the policy of this state to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health, safety or welfare of such children.~~

Comment [DoHS2]: This entire section was also deleted by the OCARPA sub-committee and all the definitions have been merged into the definitions section of the OCC.

- ~~2. — It is the policy of this state that in responding to a report of child abuse or neglect:~~

- ~~a. — in any necessary removal of a child from the home,~~
~~b. — in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, and~~
~~c. — in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act,~~
~~that the best interests of the child shall be of paramount consideration.~~

- ~~B. Except as otherwise provided by and used in the Oklahoma Child Abuse Reporting and Prevention Act:~~

- ~~1. "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;~~

- ~~2. "Harm or threatened harm to a child's health or safety" includes, but is not limited to:~~

- ~~a. — nonaccidental physical or mental injury,~~
~~b. — sexual abuse,~~
~~c. — sexual exploitation,~~
~~d. — neglect,~~
~~e. — failure or omission to provide protection from harm or threatened harm, or~~
~~f. — abandonment;~~

- ~~3. "Neglect" means failure or omission to provide:~~

- ~~a. — adequate food, clothing, shelter, medical care, and supervision,~~
~~b. — special care made necessary by the physical or mental condition of the child, or~~

Comment [DoHS3]: All definitions in this subsection have been merged with the OCC definitions.

~~c. — abandonment;~~

~~4. "Child" means any unmarried person under the age of eighteen (18) years, except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;~~

~~5. "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 as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;~~

~~6. "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;~~

~~7. "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;~~

~~8. "Multidisciplinary child abuse team" means any freestanding team established pursuant to the provisions of Section 7110 of this title. For purposes of this definition, "freestanding" means a team not used by a child advocacy center for its accreditation;~~

~~9. "Child advocacy center" means a center and the multidisciplinary child abuse team of which it is a member that is accredited by the National Children's Alliance and shall be classified, based on the child population of a district attorney's district, as follows:~~

~~a. — nonurban centers in districts with child populations that are less than sixty thousand (60,000);~~

~~b. — mid-level nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and~~

~~c. — urban centers in Oklahoma and Tulsa Counties.~~

~~10. "Assessment" means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat to the child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:~~

~~a. — an evaluation of the child's safety, and~~

~~b. — a determination regarding the family's need for services;~~

~~11. "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:~~

- ~~a. — an evaluation of the child's safety or welfare,~~
- ~~b. — a determination whether or not child abuse or neglect occurred, and~~
- ~~c. — a determination regarding the family's need for prevention and intervention-related services;~~

~~12. "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;~~

~~13. "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;~~

~~14. "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;~~

~~15. "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;~~

~~16. "Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification;~~

~~17. "Department" means the Department of Human Services;~~

~~18. "Commission" means the Commission for Human Services; and~~

~~19. "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.~~

§10-7103. Reporting of abuse, neglect or birth of chemically-dependent child - Retaliation by employer - Contents of report - Violations - Spiritual treatment of child through prayer.

Comment [DoHS4]: Definition has been greatly simplified to say what it has always said, but in simple language.

A. 1. Every:

a. ~~physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,~~

b. ~~registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,~~

c. ~~teacher of any child under the age of eighteen (18) years, and~~

d. ~~other person~~

having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of ~~Human Services~~. Such reports may be made by telephone, in writing, personally or by any other method ~~prescribed by the Department. Any report of abuse or neglect made pursuant to this section shall be made in good faith.~~

Comment [DoHS5]: Deleted by OCARPA sub-committee.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of ~~Human Services~~.

3. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall ~~impede or inhibit~~ interfere with the reporting obligations of any employee or other person. ~~No employer, supervisor or administrator of any employee or other person required to provide information pursuant to this section shall discharge, or in any manner discriminate or retaliate against, the employee or other person who in good faith provides such reports suspected child abuse or neglect reports, or information, testifies, or is about to testify or who provides testimony in any proceeding involving child abuse or neglect; provided, that the person did not perpetrate or inflict such abuse or neglect.~~ Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees. ~~Internal procedures to facilitate child abuse or neglect reporting and inform employers, supervisors and administrators of reported suspected child abuse or neglect may be established provided that they are not inconsistent with the provisions of this section and that such procedures shall not relieve the employee or such other person from the individual reporting obligations required by this section.~~

Comment [DoHS6]: The edits in this paragraph were primarily language "clean-up".

5. ~~Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.~~

Comment [DoHS7]: This paragraph was moved to current §7106 below in order that all language regarding release of medical records to law enforcement and DHS during the course of an investigation would be in one place.

~~B. If the report is not made in writing in the first instance, it shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, as soon as may be after it is initially made by telephone or otherwise and shall contain the following information:~~

Comment [DoHS8]: This paragraph B is being deleted because the KIDS system is set up to obtain this information when the report is made making this part of the statute unnecessary (Jonna G.). Amendment approved 10-12-07.

- ~~1. The names and addresses of the child and the child's parents or other persons responsible for the child's health, safety or welfare;~~
- ~~2. The child's age;~~
- ~~3. The nature and extent of the abuse or neglect, including any evidence of previous injuries;~~
- ~~4. If the child has tested positive for alcohol or a controlled dangerous substance; and~~
- ~~5. Any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefore if such information or any part thereof is known to the person making the report.~~

~~C. Any person who knowingly and willfully fails to promptly report any incident as provided in this section suspected child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported ~~by the Department of Human Services~~ to local law enforcement for criminal~~

Comment [DoHS9]: Amended to clarify that a failure to report will be treated the same as interference with a report of suspected CAN.

investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

Comment [DoHS10]: The was deleted because the report should be made anyone directly to law enforcement & not by or through DHS.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported ~~by the Department of Human Services~~ to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

2. If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

~~E. 1. Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.~~

Comment [DoHS11]: This was deleted in order to remove any doubt regarding the obligation of every person to report CAN. The current language might be construed as creating an exception to reporting when in fact it does not.

~~2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.~~

Comment [DoHS12]: This paragraph is going to be moved to the medical section of the OCC.

F. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection A of this section.

§10-7003-1.1. Assessment and investigations - Determinations by Department of Human Services and law enforcement agencies.

A. Upon notification or receipt of a report that a child may be deprived abused or neglected whenever the county office determines that there are reasonable grounds to believe that a child may be deprived, the Department of Human Services shall conduct an assessment or investigation in accordance with priority guidelines established by the Department.

2. ~~Notification or receipt of a report that a child may be a victim of abuse or neglect, and any investigation or assessment made as a result of such notification or report, shall be subject to and conducted pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act.~~

Comment [A13]: Deleted paragraph due to consolidation of OCARPA into Code

3. The Department shall forward a report of its investigation and findings to any the district attorney's office which may have jurisdiction to file a petition pursuant to Section XXXX of the Oklahoma Children's Code.

Comment [A14]: Allows DHS to send report to all DA's who may have jurisdiction.

B. 1. If, upon receipt of a report alleging abuse or neglect or during after the assessment or investigation, the Department determines that:

a. ~~an the alleged abuse or neglect of a child was perpetrated by perpetrator~~ is someone other than a person responsible for the child's health, safety or welfare, and

b. ~~an the alleged abuse or neglect of a the child does not appear to be~~ attributable to failure on the part of a person responsible for the child's health, safety or welfare to provide protection for the child,

Comment [A15]: Changes in this section are mainly clean-up and to clarify referrals that occur back & forth between law enforcement and DHS.

the Department shall immediately verbally notify an make a referral, either verbally or in writing, to the appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation unless:

- (1) The Department has reason to believe the alleged perpetrator is a parent of another child, not the subject of the criminal investigation, or is otherwise a person responsible for the health, safety or welfare of another child;

(2) Notice is received from a law enforcement agency that it has determined the alleged perpetrator is a parent of or a person responsible for the health, safety or welfare of another child not the subject of the criminal investigation; or

The verbal notification to the local law enforcement agency shall be followed by a written referral transmitted no later than the close of the next business day.

~~2. The Department shall determine whether the alleged perpetrator is a parent of any child or is otherwise a person responsible for the child's health, safety or welfare. If the alleged perpetrator is determined to be a parent of a child or is otherwise a person responsible for the child's health, safety or welfare, such determination shall constitute reasonable grounds to conduct an assessment or investigation regarding such child pursuant to subsection A of this section.~~

~~3. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation of the case unless:
a. notice is received from the law enforcement agency as provided by subsection C of this section,
b. the alleged perpetrator is a person responsible for the child's health, safety or welfare, or~~

(3) The appropriate law enforcement agency requests the Department, in writing, to participate in the investigation. If funds and personnel are available, as determined by the Director of ~~Human Services~~ the Department or his designee, the Department may assist law enforcement in the investigation interviewing children alleged to be victims of physical or sexual abuse of a child perpetrated by a person other than the parent or person responsible for the health, safety or welfare of the child.

Comment [A16]: Assistance only needed for interviewing children.

~~4. The Commission for Human Services shall promulgate rules for the implementation of the provisions of this subsection. Such rules shall include, but not be limited to, provision for adequate and appropriate assessment or investigation by the Department prior to notification of a local law enforcement agency.~~

Comment [A17]: This is being stricken as unnecessary verbiage since DHS already has authority to promulgate policy.

C. 1. Any law enforcement agency receiving a referral as provided in this section shall provide the Department of Human Services' local child welfare office with a copy of the report of its any investigation resulting from a referral from the Department or shall provide a written statement as to why a criminal investigation was not conducted.

Comment [A18]: Changes in this subsection are clean-up.

2. a. Whenever, in the course of any criminal investigation, a law enforcement agency determines that there is cause to believe that a child may be or is alleged to be abused, or neglected or deprived by reason of the acts, or omissions or failures on the a part of a person responsible for the health, safety or welfare of the child or the failure on the part of a person responsible for the child's health, safety or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office Department for the purpose of an investigation by that office.

b. The verbal notification to the local child welfare office shall be followed by a written referral to the Department of Human Services no later than the close of the next business day.

Comment [A19]: Deleted requirements for law enforcement and DHS to provide written notifications to each other. Time consuming and not being done.

§10-7104. Report of criminally inflicted injuries.

~~Any physician, surgeon, resident, intern, physician's assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be criminally injurious conduct, including, but not limited to, child physical or sexual abuse, as defined by the Oklahoma Crime Victims Compensation Act, shall report orally or by telephone the matter promptly to the nearest law enforcement agency in the county wherein the criminally injurious conduct occurred, or if the location where the conduct occurred is unknown, the report shall be made to the law enforcement agency nearest to the location where the injury is treated.~~

Comment [DoHS20]: This entire section is being deleted as unnecessary since we already have a section that states they have to report everything, criminal or not.

~~However, criminally injurious conduct which appears to be or is reported by the victim to be domestic abuse, as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a minor child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall be reported according to the standards for reporting as set forth in the Domestic Abuse Reporting Act and Sections 3 and 4 of this act.~~

§10-7104.1. Judicial authority to request investigation.

A judge of the district court ~~shall have the authority to may~~ request an investigation be conducted by the Oklahoma State Bureau of Investigation ~~or other law enforcement agency in cases where it has been determined the court reasonably believes~~ that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

Comment [DoHS21]: Language clean-up.

Comment [DoHS22]: Language clean-up & clarifying that any law enforcement agency can be asked to do an investigation when statutory criteria is met.

§10-7105. Immunity from civil and criminal liability - Presumption.

~~A. Any person who, in good faith and exercising due care, participating in good faith and exercising due care in the making of a report pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act reports suspected child abuse or neglect, or any person who, in good faith and exercising due care,~~ allows access to a child by persons authorized to investigate a report concerning the child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

Comment [DoHS23]: Language clean-up.

~~B. For purposes of any proceeding, civil or criminal, the good faith of any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, registered nurse, or any other health care professional person in making a report pursuant to the provisions of Sections 7103 XXXX or 7104 XXXX of this title shall be presumed.~~

Comment [DoHS24]: Language clean-up made in connection with the amendment in current §7103 that "every person" must report. Good faith presumption can be rebutted RE: False reports.

C. A child advocacy center that is accredited by the National Children's Alliance, and the employees thereof, who are acting in good faith and exercising due care shall have immunity from civil liability that may be incurred or imposed through participation in the investigation process and any judicial proceeding resulting from the investigation process.

§10-7105.1. Priority of investigations or assessments - Community-based programs.

~~A. The Department of Human Services shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations or assessments on a priority basis in response to reports of child abuse or neglect.~~

Comment [DoHS25]: Sub-section A was deleted because it is covered in current §7106 below.

~~B. The Oklahoma Commission on Children and Youth and the Oklahoma Youth Services Association, in cooperation with the Department of Human Services, shall:~~

Comment [DoHS26]: This entire sub-section B concerning community based programs is deleted here because it is going to be moved to a separate section of Title 10 that deals with Contracts & Programs.

- ~~1. Identify community based prevention and intervention related services and facilitate access to such services for children and families at risk of future abuse or neglect; and~~
- ~~2. Assist in the development and coordination of community based programs that work to reduce the potential for abuse and neglect in at-risk families.~~

§10-7106. Investigation of child abuse or neglect – Assessment of family – Immediate removal of child - Report – Voluntary services - Temporary restraining order - Investigation by State Bureau of Investigation.

~~A. 1.~~ Any county office of the Department of Human Services receiving a child abuse or neglect report as provided in Section 7-103 of this title shall promptly respond to the report by initiating an investigation of the report or an assessment of the family in accordance with priority guidelines established by the Department of Human Services. The Department may assign priorities to prioritize reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child. The Department shall adopt ~~the~~ a priority system pursuant to rules promulgated by the Commission for Human Services. The primary purpose of the investigation or assessment shall be the protection of the child.

Comment [DoHS27]: The edits in sub-paragraph A.1 were made to conform with the definition section on investigations & findings. Also some language clean-up.

~~2.~~ The Department, when feasible, shall designate certain staff in each county office to only handle reports requiring an investigation and shall designate other staff to conduct assessments in response to reports which do not require an investigation.

Comment [DoHS28]: This amendment in A-2 was necessary because only investigations will be done since term "assessments" is being deleted.

~~3.~~ If an investigation or assessment conducted by the Department of Human Services in response to any report of child abuse or neglect shows that the incident reported was the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, the investigation or assessment will proceed no further and all records regarding the incident shall be expunged. ~~If such incident was the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, all records regarding the incident shall be expunged.~~

Comment [DoHS29]: Language clean-up.

~~B.~~ As necessary to complete a thorough investigation or assessment, the county office or the Department shall determine:

- ~~1.~~ The nature, extent and cause of the abuse or neglect, if applicable;
- ~~2.~~ The identity of the person responsible for the abuse or neglect, if applicable;
- ~~3.~~ The names and conditions of any other children in the home;
- ~~4.~~ An evaluation of the parents or persons responsible for the health, safety or welfare of the child;

Comment [DoHS30]: The entire sub-section B is deleted because it is an agency policy statement which belongs in regulations, but not statutes.

- ~~5. The adequacy of the home environment;~~
- ~~6. The relationship of the child to the parents or persons responsible for the health, safety or welfare of the child;~~
- ~~7. Any service needs of the child and the parents or persons responsible for the health, safety or welfare of the child and any other children in the home to reduce the potential for abuse and neglect; and~~
- ~~8. All other pertinent data.~~

C. 1. ~~The investigation or assessment shall include a visit to the child's home,~~

Comment [DoHS31]: Sub-paragraph C.1 edits were made for consistency & language clean-up.

unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith, ~~and~~ The interview visit shall ~~also~~ include an interview with and examination of the subject child. ~~The interview with and examination of the child~~ and may be conducted at any reasonable time and at any place including, but not limited to, the child's school. ~~It shall be the responsibility of the~~ The Department of Human Services to shall notify the ~~parents~~ person responsible for the child's health, safety and welfare that the ~~of~~ a child ~~who~~ has been interviewed at a school. The investigation or assessment may include an interview with the child's parents or any other person responsible for a child's health, safety or welfare and an interview with and examination of any child in the home.

2. The investigation or assessment may include a medical, psychological, or psychiatric examination of any child in ~~that~~ the home. If admission to the home, school, or any place where the child may be located cannot be obtained, then the district court having jurisdiction, upon application by the district attorney and upon cause shown, shall order the ~~parents or other~~ persons responsible for the health, safety or welfare of the child, or the person in charge of any place where the child may be located, to allow entrance for the interview, the examination and the investigation or assessment. If the ~~parents or other~~ persons responsible for the child's health, safety or welfare do not consent to a medical, psychological or psychiatric examination of the child that is requested by ~~the county office or the~~ Department, the district court having jurisdiction, upon application by the district attorney and upon cause shown, shall order the examination to be made at the times and places designated by the court. ~~As necessary in the course of conducting an investigation, the Department may request and obtain, without a court order, copies of the prior medical records of a child including, but not limited to, hospital records and medical and dental records. The physician-patient privilege shall not constitute grounds for failure to produce such records.~~

Comment [DoHS32]: More language clean-up in this sub-section C-2. The last sentence was stricken because its being placed with the paragraph below regarding sharing of records w/ the Department & law enforcement.

3. The investigation or assessment may include an inquiry into the possibility that the child, ~~a parent~~ or a person responsible for the child's health, safety or welfare has a history of mental illness. If ~~a parent or~~ such person responsible for the child's health, safety or welfare does not allow ~~the county office or the~~ Department to have access to ~~mental~~ behavioral health records or treatment plans, ~~requested by the county office or the Department,~~ which may ~~relate~~ be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, shall by order allow the ~~county office or the~~ Department to have access to the records pursuant to terms and conditions prescribed by the court.

Comment [DoHS33]: Paragraph 3 is primarily language clean-up. A person responsible for the child includes a parent.

4. a. If the court determines that the ~~parent or person responsible for the~~ child's health, safety or welfare subject of the behavioral health records is indigent, the court shall appoint an attorney to represent ~~the parent or person responsible for the child's health, safety or welfare~~ that person at the hearing to obtain ~~mental~~ behavioral health records.

Comment [DoHS34]: Language clean-up for consistency with amendments made concerning similar language in other sections. The county office is the Department.

Comment [DoHS35]: The edits in paragraph 4 a & b are language clean-up so that mental health records are the only subject matter.

b. A ~~parent or~~ person responsible for the child's health, safety or welfare is entitled to notice and a hearing when the ~~county office or the~~ Department seeks a court order to allow a ~~medical,~~ psychological or psychiatric examination or access to ~~mental~~ behavioral health records.

c. Access to ~~mental~~ behavioral health records does not constitute a waiver of confidentiality.

5. The investigation of a report of sexual abuse or serious physical abuse or both sexual abuse and serious physical abuse shall be conducted, when

Comment [DoHS36]: Editor's Note: Existing language retained. Added requirement of law enforcement and DHS to exchange investigation information.

appropriate and possible, using a multidisciplinary team approach as provided by Section XXXX of this title. Law enforcement and the Department shall exchange investigation information.

Comment [DoHS37]: This D.1 paragraph is a new section made up of "sharing information" language now contained in the current §7103. The sub-committee wanted all references to the sharing of information pursuant to an investigation by law enforcement or DHS to be in one location. Currently it is in two places.

D.1. Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

Comment [C038]: Editor's Note: We are leaving this phrase "of Human Services" here since often DHS investigators have to show this statute to medical staff in order to prove that DHS is entitled to the medical records without a court order.

2. As necessary in the course of conducting an investigation, the Department may request and obtain, without a court order, copies of all prior medical records of a child including, but not limited to, hospital records, medical and dental records. The physician-patient privilege shall not constitute grounds for failure to produce such records.

Comment [DoHS39]: See above comment. This sub-paragraph moved here from C.2 above. Amendment approved 10-12-07.

~~D. The Department shall conduct an assessment in response to reports initially referred for an investigation, if it is determined that a complete investigation is not required.~~
~~E. The Department shall immediately commence an investigation if it is determined, at any time during the assessment process, that an investigation is warranted as provided for in the priority guidelines established by the Department.~~

Comment [DoHS40]: Editor's Note: These subsections D & E are deleted as unnecessary (policy statement).

~~F D.~~ If, before the investigation is complete, the ~~opinion of the child protective services worker~~ Department determines is that immediate removal of the child is necessary to protect the child from further abuse or neglect, the ~~child protective services worker~~ Department shall recommend that the child be taken into custody pursuant to the ~~Oklahoma Children's Code~~.

Comment [DoHS41]: The amendments in sub-section F are clean-up and deletion of superfluous language. The CPS worker is the Department.

G. 1. The ~~county office~~ Department shall make a complete written report of the investigation. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

2. ~~Reports of assessment recommendations shall not be required to be submitted to appropriate district attorneys unless such district attorneys request that copies of the assessment recommendations be submitted to them. Immediately after the effective date of this act, the Department shall send written notice to all district attorneys in this state informing them of their right to request and receive copies of the assessment recommendations.~~

Comment [CO42]: Amendment requires DHS to submit all assessment reports to the DA's office & the DA will not need to specifically request these reports.

~~H.~~ The Department, where appropriate and in its discretion, shall identify prevention and intervention-related services available in the community and arrange for such services to be provided to the family when an investigation or assessment indicates the family would benefit from such services, or the Department may provide such services directly. The Department shall ~~thoroughly~~ document in the record its attempts to provide, or arrange for the provision of, voluntary services and shall determine within sixty (60) days whether the family has accessed such services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family ~~continues to refuse~~ voluntary services or does not access such services, and it is determined by the ~~child protective services worker~~ Department that the ~~child needs to be protected~~ child's surrounding are such as to endanger the health, safety or welfare of the child, the Department may ~~initiate an investigation~~ recommend that the child be placed in protective or emergency custody or that a petition be filed.

Comment [DoHS43]: Editor's Note: A "look back" clause added for Department to determine if family has accessed services.

~~I.~~ ~~Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the investigation of a child abuse or neglect report shall comply with the provisions of Section 7003-1.1 of this title.~~

Comment [DoHS44]: This is being stricken since §7003-1.1 regarding investigations has been moved to this Article

~~J. If the Department has reason to believe that a parent of the child or other person responsible for the child's health safety and welfare may remove the child from the state before the investigation is completed, the Department may request the district attorney to file an application for a temporary restraining order in any district court in the State of Oklahoma without regard to continuing jurisdiction of the child. After a hearing on the application, Upon cause shown, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from the state pending completion of the investigation if the court finds that the county office or the Department has probable cause to conduct the investigation.~~

Comment [DoHS45]: Language clean-up due to the fact that a parent is included in the definition of a person responsible for the child.

K. The Director of the Department of ~~Human Services~~ or designee shall have the authority to may request an investigation be conducted by the Oklahoma State Bureau of Investigation or other law enforcement agency in cases where it has ~~been determined~~ reasonably believes that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

~~§10-7107. Confidentiality - Violation - Penalty.~~

~~A. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the reports required by Section 7103 of this title or any other information acquired pursuant to the Oklahoma Child Abuse Reporting and Prevention Act shall be confidential and may be disclosed only as provided in Section 7111 of this title and the Oklahoma Children's Code.~~
~~B. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act any violation of the confidentiality requirements of the Oklahoma Child Abuse Reporting and Prevention Act shall, upon conviction, be a misdemeanor punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.~~

Comment [DoHS46]: This entire section is being stricken and moved to the Article in the OCC that will deal with records & confidentiality.

§10-7108. Notice to person being investigated – Notice of family assessment.

Comment [DoHS47]: The amendments in this section are primarily language clean-up & for consistency with changes made in other sections.

A-11 was added in order that a parent be put on notice from the beginning of the possibility of losing parental rights for failure to appear for court proceedings.

A. At the initial time of contact with a ~~parent or other person~~ responsible for a child's health, safety, or welfare who is the subject of an investigation pursuant to the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code, the ~~child protective services~~ Department worker shall advise such person of the specific complaint or allegation made against the person. If the worker is unable to locate the ~~parent or other person~~, as soon as possible after initiating the investigation of the ~~parent or other person~~, the ~~child protective services~~ worker shall provide to the ~~parent or person~~ a brief and easily understood written description of the investigation process. Such notice shall include:

1. A statement that the investigation is being undertaken by the Department of ~~Human Services~~ pursuant to the requirements of the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code in response to a report of child abuse or neglect;
2. A statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the Department since the report could have been made anonymously;
3. A statement that the investigation is required by law to be conducted in order to enable the Department of ~~Human Services~~ to identify incidents of abuse or neglect in order to provide protective or preventive social services to families who are in need of such services;

4. A statement that, upon completion of the investigation, ~~the parent or other person will receive~~ a letter will be sent from the Department which will inform such ~~the parent or other~~ person:

a. that the Department has found insufficient evidence of abuse or neglect,
or

b. that there appears to be probable cause to suspect the existence of child abuse or neglect in the judgment of the Department;

5. An explanation of the procedures of the Department ~~of Human Services~~ for conducting an investigation of alleged child abuse or neglect, including:

a. a description of the circumstances under which the Department would seek to remove the child from the home through the judicial system, and

~~b.~~ an explanation that the law requires the Department to refer all reports of ~~alleged criminal~~ child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

Comment [DoHS48]: Clean-up.

6. The procedures to follow if there is a complaint regarding the actions of the Department or to request a review of the findings made by the Department during or at the conclusion of the investigation;

~~7.~~ The person's right to review all records filed with the court in the event an action is filed concerning the investigation, provided the review shall not include the name of the person who filed the report specified in Section 7103 of this title, and provided the review would not jeopardize an ongoing criminal investigation or adjudicatory hearing;

Comment [DoHS49]: This amendment is consistent with current law which permits parents & others to review records filed in the deprived proceeding. The remaining language in the sub-section was stricken because it is redundant &/or not germane to the person's rights.

8. The person's right to seek legal counsel;

9. References to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and
10. The process the person may use to acquire visitation with access to the child if the child is removed from the home.

11. A statement that a failure to appear for court proceedings may result in the termination of the person's parental rights to the child.

~~B. If the Department determines that a family assessment may be needed, the Department shall, at the time of the initial contact, provide the parent of the child with the following information:~~

- ~~1. The purpose of the contact with the family;~~
- ~~2. The name of the child protective services worker responding and such person's office telephone number; and~~
- ~~3. The assessment process to be followed during the Department's intervention with the family including the possibility that the family may be referred for prevention or intervention-related services and that the family may be expected to participate in such services.~~

§10-7109. Disclosure of information - Transmission of records.

A. The Department of ~~Human Services~~ may provide information to a person or agency that provides professional services such as medical examination of or therapeutic intervention with a victim of abuse or neglect. This information may include, but is not limited to:

1. The investigative determination; or
2. The services offered and provided.

Comment [DoHS50]: Editor's Note: Deletion due to it being a policy statement. Assessments are being incorporated into a new definition called "Safety analysis" to be consistent with the new practice model.

B. The Department shall forward to any hospital or any physician, including, but not limited to, doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, reporting the abuse or neglect of a child pursuant to Section 7103 ~~XXXX~~ of this title, information including the investigative determination, the services offered or provided, and such other information deemed necessary by the Department. Such information shall be entered and maintained in the child's medical records.

~~C. 1. The Department of Human Services shall forward to the school principal of the school in which a child is enrolled making a child abuse report pursuant to Section 7103 of this title a summary of any confirmed report of sexual abuse or severe physical abuse of the Department concerning the child. The summary shall include a brief description of the circumstances of sexual abuse or serious physical abuse, the name of the parent or person responsible for the child's health or welfare, and the name of a Department employee who serves as a contact person regarding the case.
2. The Department shall not release data that would identify the person who made the initial child abuse or neglect report, other than an employee of the Department, or who cooperated in a subsequent investigation unless a court of competent jurisdiction orders release of the information for good cause shown.
3. The school principal shall forward to the receiving school all confirmed reports of sexual abuse and severe physical abuse received from the Department whenever a child transfers from one school district to another, and shall notify the Department of the child's new school, and address, if known.
4. Records maintained and transmitted pursuant to this section shall be confidential and shall be maintained and transmitted in the same manner as Special Education records or other such records, pursuant to Title 70 of the Oklahoma Statutes. Access to such records may be made available by the principal or designee to a person designated to assist in the treatment of or with services provided to the child. Such records shall be destroyed when the student reaches eighteen (18) years of age.
D. The transmission of and access to such records shall not constitute a waiver of confidentiality.
E. It shall be unlawful pursuant to the Oklahoma Child Abuse Reporting and Prevention Act ~~Children's Code~~ for the Commission for Human Services, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.~~

Comment [DoHS51]: All of subsection C, D, E, F & G has been stricken because schools access to confidential records is contained in Article 6 – Children's Records.

~~F. Any person to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this section.~~

~~G. The Department shall submit the summary of confirmed sexual abuse or severe physical abuse of a child on forms developed by the Department. Such forms shall contain a warning that the information contained therein is confidential and may only be released to a person designated by the principal to assist in the treatment of or with services provided to a child.~~

§10-7111. Information system for maintenance of reports of child abuse, sexual abuse and neglect.

Comment [DoHS52]: The only amendment in this section is to delete the current reference to OCARPA since it is being moved to the OCC.

A. There is hereby established within the Department of ~~Human Services~~ an information system for the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code.

B. The Division of Children and Family Services of the Department of ~~Human Services~~ shall be responsible for maintaining a suitably cross-indexed system of all the reports.

C. The records maintained shall contain, but shall not be limited to:

1. All information in the written report required by Section 7103 ~~XXXX~~ of this title;
2. A record of the final disposition of the report including services offered and services accepted;
3. The plan for rehabilitative treatment; and
4. Any other relevant information.

D. Data and information maintained and related to individual cases shall be confidential and shall be made available only as authorized by state or federal law.

E. The Commission for Human Services shall promulgate rules governing the availability of such data and information.

F. Rules promulgated by the Commission shall encourage cooperation with other states in exchanging reports in order to effect a national registration system.

G. No person shall allow the data and information maintained to be released except as authorized by Article V __ of the Oklahoma Children's Code.

H. Records obtained by the Department shall be maintained by the Department until otherwise provided by law.

§10-7112. Appointment of representatives for child.

- A. 1. In every criminal case filed pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the judge of the district court may appoint an attorney at law to appear for and represent a child who is the alleged victim of child abuse or neglect.
2. The attorney may be allowed a reasonable fee for such services and shall meet with the child as soon as possible after receiving notification of the appointment.
3. Except for good cause shown to the court, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing.
4. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents, legal guardian, custodian or other person responsible for the child's health or safety made pursuant to this section.
5. The attorney shall represent the child and any expressed interests of the child. To that end, the attorney shall make such further investigation as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court, and participate further in the proceedings to the degree appropriate for adequately representing the child.
- B. A court-appointed special advocate or guardian ad litem as defined by the Oklahoma Children's Code and the Oklahoma Juvenile Code may be appointed to represent the best interests of the child who is the alleged subject of child abuse or neglect. The court-appointed special advocate or guardian ad litem shall be given access to all reports relevant to the case and to reports of service providers and of examination of the child's parents, legal guardian, custodian or other person responsible for the child's health or safety made pursuant to this section including but not limited to, information authorized by the Oklahoma Children's Code and the Oklahoma Juvenile Code.
- C. At such time as the information maintained by the statewide registry for child abuse, sexual abuse, and neglect is indexed by name of perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

Comment [DoHS53]: This entire section has been stricken because it deals with criminal cases that might be filed and therefore needs to be moved to the criminal code.

§10-7114. Payment of costs by defendant upon conviction.

- A. 1. In addition to any other costs which a court is authorized to require a defendant to pay, upon conviction of any offense involving child abuse or neglect, the court may require that the defendant pay court-appointed attorney fees for the child to any local or state agency incurring the cost or any other person or entity providing services to or on behalf of the child, and the cost of any medical examinations conducted on the child in order to determine the nature or extent of the abuse or neglect.

Comment [DoHS54]: This entire section is being deleted because it deals with criminal cases and needs to be moved to the criminal code.

~~2. If the court determines that the defendant has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the local or state agency or other person or entity incurring the cost in the manner in which the court believes reasonable and compatible with the defendant's financial ability.~~

~~3. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.~~

~~B. 1. In addition to any other costs which a court is authorized to require a defendant to pay, upon conviction of any offense involving sexual abuse, the court may require that the defendant pay, to the local or state agency incurring the cost, the cost of any medical examinations conducted on the child for the collection and preservation of evidence.~~

~~2. If the court determines that the defendant has the ability to pay all or part of the cost of the medical examination, the court may set the amount to be reimbursed and order the defendant to pay that sum to the local or state agency incurring the cost, in the manner in which the court believes reasonable and compatible with the defendant's financial ability.~~

~~3. In making the determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.~~

~~4. In no event shall a court penalize an indigent defendant by imposing an additional period of imprisonment in lieu of payment.~~

~~C. 1. The court shall require the defendant to pay, upon conviction of any offense involving the sexual or physical abuse of a child, for the psychological evaluation to determine the extent of counseling necessary for the victim of the abuse and any necessary psychological counseling deemed necessary to rehabilitate the child.~~

~~2. Such evaluations and counseling may be performed by psychiatrists, psychologists, licensed professional counselors or social workers. The results of the examination shall be included in the court records and in information contained in the central registry.~~

~~**§10-7115. Child abuse — Child neglect — Child sexual abuse — Child sexual exploitation — Enabling — Penalties.**~~

~~A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child abuse" means the willful or malicious abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.~~

Comment [DoHS55]: This entire section is being deleted because it deals with criminal cases and needs to be moved to the criminal code.

~~B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment. As used in this subsection, "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.~~

~~C. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child neglect" means the willful or malicious neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.~~

~~D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.~~

~~E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of Title 21 of the Oklahoma Statutes. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.~~

~~F. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.~~

~~G. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.~~

~~H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.~~

~~I. Notwithstanding any other provision of law, any parent or other person convicted of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction for any offense of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age shall be punished by death or by imprisonment for life without parole.~~

§10-7115.1. Relinquishment of child 7 days of age or younger to medical services provider or child rescuer.

A. A parent subject to the provisions of this act shall not be prosecuted for child

abandonment or child neglect under the provisions of ~~Sections 851, 852, 853,~~

~~858.1 and 858.3 of Title 21 of the Oklahoma Statutes, subsections C and D of~~

~~Section 7115 of Title 10 of the Oklahoma Statutes, paragraph 3 of subsection B~~

~~of Section 7102 of Title 10 of the Oklahoma Statutes, or any other statute which~~

makes child abandonment or child neglect a crime, when the allegations of child

abandonment or child neglect are based solely on the relinquishment of ~~a child~~

~~seven (7) days of age or younger~~ an infant to a medical services provider or a

child rescuer as defined in this section.

B. The following entities shall, without a court order, take possession of ~~a child~~

~~who is seven (7) days of age or younger~~ an infant if the ~~child~~ infant is voluntarily

delivered to the entity by the parent of the ~~child~~ infant and the parent did not

express an intent to return for the ~~child~~ infant:

1. A medical services provider; or

2. A child rescuer.

C. Any entity identified in subsection B of this section to which a parent seeks to relinquish ~~a child~~ an infant pursuant to the provisions of this section may:

1. Request, but not demand, any information about the ~~child~~ infant that the

parent is willing to share. The entity is encouraged to ask about, but not

demand, the details of any relevant medical history relating to the ~~child~~ infant or

the ~~child's~~ infant's parents. The entity shall respect the wish of the parent if the

parent desires to remain anonymous; and

Comment [DoHS56]: The subcommittee decided that this statute should not be limited to a child who is 7 days old or younger (What if the child was 8 days old? Can the age really be determined with any certainty?) We decided the statute should apply to the relinquishment of an "infant" which has been defined as a child age 12 months or younger.

Comment [DoHS57]: Language clean-up – if a person won't be prosecuted under any statute, it is unnecessary to enumerate statutes.

2. Provide the parent with printed information relating to the parents' rights, including both parents, with respect to reunification with the ~~child~~ infant and sources of counseling for the parents, if desired.

D. Once a ~~child~~ an infant has been relinquished to any entity identified in subsection B of this section, the entity receiving the ~~child~~ infant shall:

1. Perform or provide for the performance of any act necessary to protect the physical health or safety of the ~~child~~ infant; and

2. Notify the local office of the Department of ~~Human Services~~ that a parent of a ~~child who is seven (7) days of age or younger~~ an infant, in the best judgment of the receiving entity, has relinquished such ~~child~~ infant and that the entity has taken possession of the ~~child~~ infant.

E. Upon being made aware that a medical services provider or child rescuer has possession of a ~~child~~ an infant under the provisions of this act, the Department of ~~Human Services~~ shall immediately check with law enforcement authorities to determine if a child has been reported missing and whether the missing child could be the relinquished ~~child~~ infant.

F. The Department of ~~Human Services~~ shall design and disseminate:

1. A simplified form for the recording of medical or other information that a relinquishing parent wishes to share with the entity to whom the ~~child~~ infant is being relinquished;

2. Easily understood printed materials that give information about parents' rights with regard to reunification with a child including, but not limited to, information on how a parent can contact the appropriate entity regarding reunification, and information on sources of counseling for relinquishing parents; and

3. Media information, including printed material, that creates public awareness about the provisions of this act.

G. For purposes of this section:

1. "Medical services provider" means a person authorized to practice the healing arts, including a physician's assistant or nurse practitioner, a registered or practical nurse and a nurse aide; and

2. "Child rescuer" means any employee or other designated person on duty at a police station, fire station, child protective services agency, hospital, or other medical facility.

H. A medical services provider or child rescuer with responsibility for performing duties pursuant to this section shall be immune from any criminal liability that might otherwise result from the entity's actions, if acting in good faith in receiving a relinquished ~~child~~ infant. In addition, such medical provider or child rescuer shall be immune from any civil liability that might otherwise result from merely receiving a relinquished ~~child~~ infant.

Comment [C058]: This section moved here from FOCUS (Foster Care Act)

§10-7218. Abandonment of child in voluntary placement.

A. For a child in a voluntary foster care placement pursuant to an agreement between the parent, legal guardian or custodian of the child and the Developmental Disabilities Services Division of the Department of Human Services if the division determines that such child has been abandoned pursuant to the provisions of Section ~~7006-1.1~~ XXXX of Title 10 of the Oklahoma Statutes, such Division may complete a written report of recommendations to the Division of Children and Family Services within the Department. Such report shall specify that the child has been abandoned and shall recommend that the Division of Children and Family Services request the district attorney to file a petition alleging the child to be deprived. If the court determines that the child has been abandoned, reasonable efforts to provide for the return of the child to the child's own home shall not be required. Then the court shall conduct a permanency hearing within thirty (30) days of such determination pursuant to the provision of Section 21 of this act.

B. If the child is subsequently adjudicated deprived, the Developmental Disabilities Services Division and the Division of Children and Family Services shall cooperate and collaborate with regard to the welfare, health and safety of the child in a permanent placement pursuant to the provisions of the Oklahoma Children's Code.

OKLAHOMA CHILDREN'S CODE

ARTICLE 3 – MEDICAL & BEHAVIORAL HEALTH TREATMENT

10 O.S. § 170.1 . Authorization to Consent to Medical or Dental Care

A. 1. Either parent or the court appointed legal guardian ~~or the legal custodian appointed by the court~~ of a minor child may authorize, in writing, any adult person into whose care the minor has been entrusted to consent to any:

Comment [DoHS1]: This was reference to DHS, now moved to new section dealing with medical.

- a. x-ray examination,
- b. anesthetic,
- c. medical or surgical diagnosis or treatment,
- d. hospital care, or
- e. immunization, blood tests, examinations, Guidance Services, and Early Intervention Services provided by a city or county Department of Health, to be rendered to said minor under the general or special supervision and upon the advice of a physician and surgeon licensed under the laws of the State of Oklahoma, or to consent to an x-ray examination, anesthetic, dental or surgical diagnosis or treatment and hospital care to be rendered to said minor by a dentist licensed under the laws of the State of Oklahoma.

2. If any parent or other person falsely represents in writing that such parent or other person has legal custody or legal guardianship of the minor child, or if any adult falsely represents that the written authorization provided for in this subsection is valid, and a health professional provides health services or care as provided by this section in good faith upon such misrepresentation, the health professional shall incur no liability except for negligence or intentional harm.

B. Either parent, if both parents have legal custody, or the parent ~~or person~~ having legal custody or the legal guardian of a minor may authorize, in writing, pursuant to the provisions of Section 1-116.2 of Title 70 of the Oklahoma Statutes a school or county nurse or in the absence of such nurse, a school administrator or designated school employees to administer:

- 1. A nonprescription medicine; and
- 2. A filled prescription medicine as that term is defined by Section 353.1 of Title 59 of the Oklahoma Statutes.

NEW SECTION: Medical care and treatment

A. For purposes of this section:

Comment [DoHS2]: Consent for medical treatment while child in protective custody. Replaces multiple existing sections dealing with medical issues.

- 1. “Routine and ordinary medical care and treatment” includes any necessary medical and dental examinations and treatment, medical screenings, clinical laboratory tests, blood testing, preventative care, health assessments, physical

Comment [DoHS3]: Routine & extraordinary medical care & treatment defined.

examinations, immunizations, contagious or infectious disease screenings or tests and care required for treatment of illness and injury, including x-rays, stitches and casts, but does not include any type of extraordinary care.

2. "Extraordinary medical care and treatment" includes but is not limited to surgery, general anesthesia, blood transfusions, invasive or experimental procedures or the provision of psychotropic medications.

B. If a child taken into protective custody without a court order requires emergency medical care prior to the emergency custody hearing, and either the treatment is related to the suspected abuse or neglect or the parent or legal guardian is unavailable or unwilling to consent to treatment recommended by a physician, a peace officer, court employee or the court may authorize such treatment as is necessary to safeguard the child's health or life. Before a peace officer, court employee or the court authorizes treatment based on unavailability of the parent or legal guardian, law enforcement shall exercise diligence in locating the parent or guardian, if known.

Comment [DoHS4]: Consent for medical treatment while child in protective custody.

C. 1. If a child has been placed in the custody of the Department, the Department shall have the authority to consent to routine and ordinary medical care and treatment. The Department shall make reasonable attempts to notify the child's parent or legal guardian of the provision of routine and ordinary medical care and treatment and to keep the parent or legal guardian involved in such care.

Comment [DoHS5]: Authority of DHS to consent to medical treatment when child in DHS legal custody.

2. In no case shall the Department consent to a child's abortion, sterilization, termination of life support or a "Do Not Resuscitate" order. The court may authorize the withdrawal of life sustaining medical treatment or the denial of the

administration of cardiopulmonary resuscitation on behalf of a child in the Department's custody upon the written recommendation of a licensed physician, after notice to the parties and a hearing.

3. Nothing herein shall prevent the Department from authorizing, in writing, any person, foster parent or administrator of a facility into whose care a child in its custody has been entrusted, to consent to routine and ordinary medical care and treatment to be rendered to a child upon the advice of a licensed physician, including the continuation of psychotropic medication.

Comment [DoHS6]: DHS can authorize caretakers of children in DHS to consent to routine & ordinary medical care & treatment.

D. Consent for a child's extraordinary medical care and treatment shall be obtained from the parent or legal guardian unless the treatment is either related to the abuse or neglect or the parent or legal guardian is unavailable or refuses to consent to such care, in which case in an emergency, based upon recommendation of a physician, the court may enter an ex parte order authorizing such treatment or procedure in order to safeguard the child's health or life. If the recommended extraordinary medical care and treatment is not an emergency, the court shall hold a hearing, upon application by the district attorney and notice to all parties, and may authorize such recommended extraordinary care.

Comment [DoHS7]: Extraordinary care as defined above requires parental consent or court order.

E. If a child has been placed in the custody of a person, other than a parent or legal guardian, or an institution or agency other than the Department, the court shall determine the authority of the person, institution or agency to consent to medical care including routine and ordinary medical care and treatment and

Comment [DoHS8]: Court determines authority of medical consent authority of persons other than parent or guardian or agencies other than DHS.

extraordinary care. The parent, legal guardian or person having legal custody shall be responsible for the costs of medical care as determined by the court.

**~~§10-7003-2.2. Emergency medical treatment or mental health care -
Emergency ex parte order - Notice and hearing.~~**

Comment [DoHS9]: Deleted due to new section dealing only with medical.

~~A. If a child is taken into protective custody without a court order due to the need for emergency medical or mental health treatment to protect the child's health, safety or welfare, the court may issue an emergency ex parte order authorizing such treatment upon application of the district attorney of the county in which the child is located. The application for an emergency ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of emergency medical or mental health treatment to protect the child's health, safety or welfare. If verbal, a written application shall be submitted to the court as soon as practicable.~~

~~B. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any emergency ex parte order issued by the court shall be served upon such parent, legal guardian, or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application, the court shall hold a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.~~

**~~§10-7003-2.3. Authorization of medical or mental health treatment -
Consent - Hearing - Responsibility for medical expenses.~~**

Comment [DoHS10]: Deleted due to new section dealing only with medical.

~~A. Except as otherwise provided by law, whenever a child in protective custody appears to be in need of medical treatment or mental health treatment, a peace officer, employee of the court, or any other legal custodian of the child shall exercise due diligence to locate a parent, guardian, or other person legally competent to authorize such treatment.~~

~~B. The consent of a parent, guardian, or other person legally competent to authorize medical treatment or mental health evaluations or treatment for a child shall not be required and the peace officer, employee of the court, or other legal custodian may authorize such treatment or evaluation:~~

~~1. When a child in protective custody requires emergency medical treatment or mental health treatment if such treatment, as determined by a competent medical or mental health authority, as the case may be, cannot be delayed; or~~

~~2. For any physical examination or routine diagnostic proceeding or evaluation necessary, as determined by competent medical authority, to determine the medical or mental condition of the child for the protection of the child and others with whom the child may come in contact while in custody.~~

~~C. 1. a. If the parent, guardian, or other person legally competent to authorize medical treatment for the child is unavailable to consent to such treatment, the court, upon application of the district attorney of the county in which the child is~~

located, shall conduct a hearing not later than five (5) days after filing of the application.

b. ~~If the parent, guardian, or other person legally competent to authorize medical treatment for the child is unwilling to consent to such treatment, the court, upon application of the district attorney of the county in which the child is located or upon application of a parent or guardian, shall conduct a hearing not later than five (5) days after filing of the application.~~

2. ~~Notice of the hearing and a copy of the application shall be served upon the parent, guardian, or other person legally competent to consent to medical treatment for the child, upon the district attorney and upon the person or agency having protective custody of the child.~~

3. ~~After any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment as is necessary to protect the health or welfare of the child.~~

D. ~~The parent, guardian, or person having legal custody of the child shall be responsible for such medical expenses as ordered by the court.~~

§10-7003-2.5. Immunity from liability for authorizing medical treatment or mental behavioral health evaluation or treatment.

Comment [DoHS11]: Clean-up & clarification of statutory intent regarding immunity from liability.

No peace officer, employee of the court, employee of the Department of Human Services, or person acting pursuant to a court order authorizing consenting or not consenting to medical treatment or mental behavioral health evaluation or treatment in accordance with the provisions of this title ~~for any child found in need of such medical treatment or mental health evaluation or treatment~~ shall have any liability, civil or criminal, for such authorization action. No physician or healthcare provider acting pursuant to such consent or pursuant to court order authorizing such treatment shall have any liability, civil or criminal, for acting pursuant to such consent or authorization.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – COURT PROCEEDINGS
PART 1 – JURISDICTION

§10-7002-1.1. Personal jurisdiction - Transfer of proceedings - Emergency order or relief - Consolidation of proceedings.

Comment [DoHS1]: This section has been almost entirely re-written to clarify & simplify jurisdiction, transfer of cases, venue and residency issues.

A. 1. Upon the filing of a petition, ~~or upon~~ the assumption of a child's custody or issuance of an emergency custody order pursuant to the provisions of Article III IV of the Oklahoma Children's Code, the district court with juvenile or domestic docket responsibility in the county in which an alleged deprived child:

Comment [CO2]: Editor's Note: How jurisdiction is obtained over the child, parents, etc. is all in one paragraph.

- a. ~~resides,~~
- b. ~~is found,~~
- c. ~~where the alleged acts of deprivation occurred, or~~
- d. ~~where a parent or sibling has a deprived proceeding pending,~~

shall have obtain jurisdiction of over any child who is or is alleged to be deprived; ~~shall have jurisdiction of the~~ Jurisdiction shall also be obtained over any parent, legal guardian, or custodian or stepparent of such child, regardless of where such parent, legal guardian, custodian, or stepparent is found, and shall have jurisdiction of and any other adult person living in the home of such child who appears in court or has been properly served with a summons pursuant to Section XXXX of this title.

Comment [CO3]: Editor's Note: All of the jurisdiction rules under one sub-section.

2. When jurisdiction has been obtained over a child who is or is alleged to be a deprived child;

- a. Such jurisdiction may be retained until the child becomes eighteen (18) years of age;

- b. The court may issue any temporary order or grant any interlocutory relief authorized by this Code in an emergency, regardless of whether another district court within the county or state has prior or current jurisdiction to determine the child's custody, support or visitation.
 - c. All other actions then pending or thereafter commenced within the county or state that concern the child's custody, support or visitation shall be automatically stayed unless after notice to the parties in the deprived action, the written consent of such court is obtained and filed in the other proceeding; provided, a child's delinquency action, may in the discretion of the court, proceed pursuant to the Oklahoma Juvenile Code;
 - d. All orders entered in the deprived proceeding concerning a child's custody, support or visitation shall control over conflicting orders entered in other actions until such time as the court's jurisdiction in the deprived proceeding terminates; and,
 - e. The judge presiding over a deprived action shall have the authority to make a final determination in the matter and preside over any separate action necessary to finalize a child's court-approved permanency plan, including an adoption, guardianship or other custody proceeding.
3. ~~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 county.~~
4. ~~When it is in the best interests of the child, the court shall transfer a proceeding under this chapter to the district court in another county.~~

~~B. The district court in which a petition is filed which alleges that a child is deprived or which assumes custody pursuant to Article III of this Code may issue any temporary order or grant any interlocutory relief authorized by this chapter in an emergency, regardless of whether another district court within the state has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.~~

1. Venue of any action involving a child alleged to be deprived may be in the county where:
 - a. The child is found;
 - b. The child resides;
 - c. The alleged acts of deprivation occurred; or,
 - d. A parent or sibling has a deprived action pending.
2. A deprived action shall not be dismissed if filed in the wrong venue, but shall be transferred to the proper venue upon discovery of the proper venue, unless venue is waived.
3. Except as provided for in the subsection, a deprived action commenced in a county outside the child's residence, may be transferred to the county of the child's residence at any stage in the proceedings after the petition has been filed. The receiving court shall continue with the proceedings as though the original petition had been filed in that court.
 - a. When a petition or motion to terminate parental rights has been filed, the case shall not be transferred until the sending court has concluded the termination proceeding.

- b. Absent good cause to the contrary a deprived action shall be transferred to the county where other proceedings are pending concerning custody of the child or the child's siblings.
 - c. Prior to adjudication pursuant to Section XXXX of this title, a case may be transferred to a venue where the evidence or witnesses are located when the interests of justice or convenience of the parties so require. Following adjudication, the receiving court may transfer the case back to the county of the child's legal residence as provided in this section.
4. For purposes of this section, the residence of the child shall be the residence of the person who has the legal right to physical custody of the child according to prior court order or by operation of law.
- a. If there is no order determining the child's custody, the custodian of the child shall be:
 - 1. both parents where they reside together;
 - 2. primary or actual physical custodial parent where parents do not reside together;
 - 3. the mother where paternity has or has not been established.
 - b. A newborn child's residence shall be deemed to be the county where the child's mother legally resided at the time of the child's birth.
 - c. When the child is in the permanent custody of a public or private child care agency, the child's residence shall be the county in which the child resides at the time when legal proceedings are initiated.

d. For purposes of transfer, the residence of the child may be with the person that the court approves for permanent placement.

Comment [C04]: Editor's Note:
Broke it out into sub-parts.

5. The court may request the transfer of the case to another county where the child resides.

a. Prior to transferring a case to another venue, the court shall contact the judge in the other venue to confirm that the judge in the other venue will accept the transfer.

b. Upon written confirmation that transfer of venue is accepted, the transferring judge shall enter the transfer order and certified copies of all documents of record with the clerk of the transferring court shall be transmitted to the receiving court along with the names and addresses of all parties entitled to notice of any further proceedings.

c. Upon transfer of the case, the receiving court shall set a hearing date for the parties that is not more than thirty (30) days following the date upon which the change of venue has occurred.

~~C. If the district court presiding over a deprived action filed pursuant to subsection B of this section sustains the petition or assumes custody pursuant to Article III of this Code, that district court shall have the jurisdiction to make a final determination on the matter or to transfer the proceedings to a court having prior jurisdiction over the child. If the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed, the determination of whether the proceeding should be consolidated and, if consolidated, which judge shall try the issues shall be determined as follows:~~

~~1. If the other proceeding is pending in the same judicial district in which the deprived petition is filed or custody is assumed, the determination shall be made by the presiding judge of that judicial district;~~

~~2. If the other proceeding is pending in a different judicial districts but within the same judicial administrative district in which the deprived petition is filed or custody is assumed, the determination shall be made by the presiding judge of that judicial administrative district;~~

~~3. If the other proceeding is pending in a judicial district not within the same judicial-administrative district in which the deprived petition is filed or custody is assumed, the determination shall be made by the presiding judge of the judicial district where the other proceeding is pending.~~

§10-7002-1.2. Evidence of child abuse or neglect in matrimonial or child custody actions - Investigation by Department of Human Services - Orders for protective custody - Appointment of attorney for child.

~~A. 1. If the evidence in a juvenile action, or an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child, for the appointment of a guardian of the person of a child, for habeas corpus, or in subsequent proceedings in such actions, court proceeding concerning child custody or visitation indicates that a child is or may be deprived, the referring a victim of abuse or neglect, the court shall notify the appropriate county office of the Department of Human Services that the child may be a victim of abuse or neglect refer the allegations to the Department for an assessment or investigation.~~

2. The Department shall conduct an assessment or investigation concerning such report in accordance with priority guidelines established by the Department of Human Services.

3. The Department shall submit all reports regarding the a report of its assessment or investigation to the office of the district attorney and ~~send~~ provide a copy of its reports to ~~such~~ the referring court within thirty (30) days of such notice, and notify parties to the proceeding of the submission of the report to the court.

4. The district attorney shall advise the referring court within three (3) days of the receipt of the Department's findings whether a deprived petition will be filed by

Comment [DoHS5]: These amendments contain some clean-up, but the substantive changes in this section are made to clarify that a judge may refer a child abuse/neglect concern for investigation or assessment by DHS.

Comment [DoHS6]: Editor's Note: Language re-worked.

that office. If no deprived petition is filed, the referring court may take appropriate action regarding the custody of the child or visitation, ~~or appointment of a guardian for the child.~~

B. 1. Nothing in this section shall preclude the referring court from entering an order to have the child ~~taken~~ placed into the emergency custody of the Department if evidence presented to the referring court indicates a child is in surroundings that are such as to endanger the welfare of the child. If a child is ~~taken~~ placed into emergency custody by such an order, the provisions of Article ~~III~~ IV of the Oklahoma Children's Code shall apply.

2. ~~Nothing in this section shall preclude any court presiding over any proceeding from referring allegations of child abuse or neglect to the Department for assessment or investigation.~~

Comment [DoHS7]: Editor's Note:
New language allows any court to refer child abuse or neglect allegations to DHS.

C. If, in any proceeding ~~listed in subsection A of this section~~ concerning child custody or visitation, the evidence indicates that a child has been subject to abuse or neglect, the court shall appoint an attorney to represent the child for that proceeding and any related proceedings and, ~~as provided by Section 7003-3.7 of this title, the court shall~~ may appoint a guardian ad litem for the child as permitted by law.

~~§7002-1.3 – Jurisdiction of Judge Presiding Over a Deprived Action~~

~~The judge presiding over a deprived action shall also have jurisdiction to make a final determination in the matter and preside over any separate action necessary to finalize a child's court-approved permanency plan, including an adoption, guardianship, or other custody proceeding.~~

Comment [DoHS8]: Stricken here & incorporated above.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – COURT PROCEEDINGS
PART 2 – PROTECTIVE & EMERGENCY CUSTODY

§10-7003-2.1. Child taken into custody prior to filing of petition -
Emergency custody - At-risk infants.

A. Pursuant to the provisions of this section, 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 officer
or employee has reasonable suspicion that

Comment [A1]: Clarifying and specifying standards for a child being taken into protective custody by LE w/o a court order.

a. The child is in need of immediate protection due to abuse or neglect;

or,

b. that The circumstances or surroundings of the child are such that

continuation in the child's home or in the care or custody of the

parent, legal guardian or custodian would present an imminent

danger to the child if the child's surroundings are such as to

endanger the welfare of the child or if continuation of the child in the

child's home is contrary to the health, safety or welfare of the child;

2. By an order of the district court issued upon the application of the office of the
district attorney. ~~The court shall include in the order a specific determination that
continuation of the child in the child's home is contrary to the health, safety or
welfare of the child.~~ The application presented by the district attorney may be

Comment [A2]: This sentence moved to the end of section

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 a

continuation of the child in the home or with the child's caretaker is contrary to the child's welfare and there is reasonable suspicion to believe that

a. The child is in need of immediate protection due to abandonment,
abuse or neglect; or,

b. The circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian or custodian would present an imminent danger to the child are such as to endanger the welfare of the child.

Comment [A3]: Editor's Note: Abandonment is a stand alone definition & not a part of the definition of abuse or neglect.

The application and order may be verbal and upon being advised by the district attorney of the verbal order, law enforcement shall act on such order. If verbal, the district attorney shall submit a written application and proposed order shall be submitted to the district court within one (1) judicial day from the issuance of the verbal order. Upon approval, the application and order shall be filed with the court clerk.

Comment [A4]: The change clarifies that law enforcement must act upon a verbal order and not delay by waiting on a written order.

a. When an order issued by the district court pursuant to this paragraph places the child in the emergency custody of the Department of Human Services pending further hearing specified by Section ~~7003-2.4~~ XXXX of this title, an employee of the Department may execute such order and physically take the child into custody in the following limited circumstance:

Comment [A5]: This language is needed to maintain federal IV-E funding. 11-09-07 comment.

- (1) the child is located in ~~an~~ a hospital, educational school or day care facility, and
- (2) ~~it is determined that assumption of the child's custody from such facility is necessary to protect the child from risk of endangerment, and~~

Comment [A6]: Eliminates waiting time for DHS and law enforcement in safe circumstances

~~(3) It is believed that assumption of the child's custody from the facility can occur without risk to the child or the employee of the Department a breach of the peace, otherwise the order child shall be taken into custody executed and the child taken into custody, by a peace officer or employee of the court.~~

~~b. — It is the intent of the Legislature that emergency custody of a child pursuant to a court order shall not occur at an educational or day care facility unless it is determined necessary to avoid endangerment to the child. The Department shall establish specific policies when an employee of the Department may take a child into emergency custody pursuant to a court order at an educational or day care facility;~~

Comment [A7]: Editor's note: We agreed to change "mental" to "behavioral" health.

3. By order of the district court when the child is in need of medical or ~~mental~~ behavioral health treatment in order to protect the child's health, safety or welfare and the child's parent, legal guardian, or ~~or~~ custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or ~~mental~~ behavioral health treatment or other action pursuant to this article. The court shall specifically include in the emergency order authorization for such medical or ~~mental~~ behavioral health evaluation or treatment as it deems necessary. ~~The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child; and~~

Comment [A8]: Moved to end of section

4. Pursuant to the provisions of Section 7115.1 of this title.

Comment [A9]: Reference to safe haven law. Should operate no differently than earlier subparagraph of section dealing with how child is taken into custody.

B. The court shall not enter an emergency custody order removing a child from the child's home unless the court makes a determination:

Comment [A10]: Clarification and movement of IV-E requirements

1. That continuation in the child's home is contrary to the welfare of the child or that immediate placement is in the best interests of the child; and

2. Whether reasonable efforts have been made to prevent the removal of the child from the child's home, or

3. An absence of efforts to prevent the removal of the child from the child's home is reasonable because the removal is due to an emergency and is for the purpose of providing for the welfare of the child.

BC. Whenever a child is taken into custody pursuant to ~~subsection A~~ of this section:

1. The child may be taken to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court, ~~provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;~~

Comment [A11]: Unnecessary, DHS and Court can determine emergency placement issues based on resources in each county

2. Except as otherwise provided by subsection ~~C~~D of this section, the child may be taken before a judge of the district court or the court may be contacted verbally for the purpose of obtaining an order for emergency custody. The court may place the child in the emergency custody of the Department or some other suitable person or entity ~~of Human Services~~ pending further hearing specified by Section 7003-2.4 XXXX of this title. ~~The Department may place the child in a kinship foster care home, another foster home or other suitable placement that is determined by the Department to meet the needs of the child, provided that the placement of an infant who appears to be or has been determined to have a~~

~~medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;~~

Comment [A12]: Will be place in DHS authority section later in Code

3. The child may be taken directly to or retained in a health care facility for medical treatment, when it ~~reasonably appears to the peace officer or court employee that~~ the child is in need of emergency medical evaluation or treatment to maintain the child's health, or as otherwise directed by the court; or

4. The child may be taken directly to or retained in a ~~mental behavioral health or substance abuse~~ treatment facility for evaluation or inpatient treatment, in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, when it ~~reasonably appears to the peace officer or court employee that~~ the child is in need of emergency ~~mental behavioral~~ health care to preserve the child's health, or as otherwise directed by the court; and

Comment [A13]: Editor's note: We agreed to change "mental" & "substance abuse" to behavioral health.

5. Except as otherwise provided by subsection ~~C~~ D of this section, the district court of the county where the ~~emergency~~ custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

~~G.~~ D. The court may provide, in an order issued pursuant to this section or by a standing order or rule, for the disposition of children taken into ~~emergency~~ custody and notification of the assumption of such custody. Such order or rule

shall be consistent with the provisions of subsection ~~B~~ C of this section, but may also:

1. Designate a licensed child care facility other than a children's shelter appropriate for the temporary care of deprived children if such facility is willing to provide care, ~~provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;~~

Comment [A14]: See above comment

2. Authorize the release of a child from custody in accord with such criteria or under such conditions as the court specifies or the placement of a child with such responsible persons as the court may designate and who are willing to provide care for the child pending further proceedings; and

~~3. Require such notice to the court concerning the assumption of custody and the disposition of children taken into custody as the court may direct.~~

Comment [A15]: Already stated at beginning of (C), page 8

~~D. 1. The Department of Human Services shall establish by rule a placement protocol for at-risk infants.~~

~~2. Factors for determining at-risk infants include, but are not limited to:~~

- ~~a. premature infants,~~
- ~~b. history of respiratory distress,~~
- ~~c. oxygen dependency,~~
- ~~d. diagnosis requiring special care beyond routine infant care,~~
- ~~e. infants under six (6) weeks of age, and~~
- ~~f. medical conditions or illnesses of the infants that without protocol placements may result in increased episodes of illness, prolonged hospitalization and increased cost for care.~~

~~3. Appropriate placement pursuant to this subsection of at-risk infants shall include, but not be limited to, foster care, approved kinship foster care and health care facilities. A children's shelter shall not be deemed to be an appropriate placement for at-risk infants unless the shelter meets the placement protocol.~~

~~4. If the at-risk infant is in a hospital setting, the infant may be placed in another appropriate placement pursuant to this subsection, only upon the release of the infant from the hospital by the infant's primary physician.~~

Comment [A16]: See above comment

E. No child taken into custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility. ~~No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious, or dissolute persons.~~

F. Any peace officer, employee of the court, court appointed special advocate, employee of the Department and any other person acting under the direction of the court, who in good faith transports any child, shall be immune from civil or criminal liability that may result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

Comment [A17]: Addresses continual concern by all in transporting children. Self-explanatory.

G. A parent or person responsible for the child who is arrested on a charge or warrant other than child abuse or neglect or an act of child endangerment may designate another person to take physical custody of the child. Upon such request, the peace officer may release the child to the physical custody of the designated person.

Comment [A18]: A child can be released to a designated person rather than being placed in a shelter of foster home.

§10-7003-2.4(A) – STAND ALONE SECTION (Notification of parent, legal guardian or custodian of emergency custody hearing)

A. 1. The peace officer, ~~or an~~ employee of the court or the Department employee responsible for assuming physical custody of a child, shall provide the parent, legal guardian, or physical custodian of a the child with immediate written notice of the protective or emergency custody of the child if personally present, or if not present as soon as ~~whenever~~ possible.

Comment [A19]: A custodian needs to be notified if child is not coming home & where child is being held

2. The written notice shall:

a. inform the parents, legal guardian, or custodian; ~~that the child has been removed from the home,~~

b. a. inform the parent, legal guardian, or custodian of the child that an emergency custody of the following:

a. that an emergency custody hearing to determine custody of the child will occur within two (2) judicial days from the date the child was removed from the home- taken into custody, and

e. ~~contain information about the:~~

{1} b. the date, time and place an for the emergency custody hearing process including, but not limited to, the date, time and place that the child was taken into protective or emergency custody,

{2} c. the nature of the allegation that led to placement of the child into protective or emergency custody,

{3} d. the address and telephone number of the local and county applicable law enforcement agencies agency and the Department,

{4} e. phone number of the local child welfare office of the Department of Human Services, and

{5} ~~the right of the parent, legal guardian or custodian to contact an attorney.~~

3. The written notice shall also contain the following ~~or substantially similar~~ language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL STAY OR BE PLACED REMAIN IN EMERGENCY CUSTODY. YOUR FAILURE TO

RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."

Comment [A20]: Clean-up of rights subparagraph and section

§10-7003-2.4(B) STAND ALONE SECTION & NEW LAW ADDED (Emergency custody hearing and findings)

B. 1. A. Within the next two (2) judicial days following the child being taken into protective or emergency custody, the court shall conduct an emergency custody hearing. At the hearing, information may be provided to the court in the form of oral or written reports, affidavits or testimony. Any information having probative value may be received by the court regardless of its admissibility under the Oklahoma Evidence Code.

Comment [A21]: New section for Emergency Custody Hearing

Comment [A22]: Adds to statute what case law has already indicated and clarifies.

At such hearing the court shall:

1. determine whether ~~evidence~~ or facts exist that are sufficient to demonstrate to the court there is ~~reason~~ reasonable suspicion that the child is in need of immediate protection due to abuse or neglect, or that the circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian or custodian would present an imminent danger to the child ~~is in surroundings that are such as to endanger the health, safety or welfare of the child.~~

Comment [A23]: Adds "standard of proof" for the emergency custody hearing that is consistent with the most recent rulings of the 10th Circuit.

2. At the emergency custody hearing, the court shall advise the parent, legal guardian or custodian of the child in writing of the procedure which will be followed with regard to determining custody of the child, including, but not limited to following:

- a. any right of the parent, ~~or~~ legal guardian or custodian to testify and present evidence at court hearings,
- b. the right to be represented by an attorney at court hearings ~~as authorized by law,~~
- c. the consequences of failure to attend any hearings which may be held, and
- d. the right ~~to appeal and the procedure for appealing the finding of a~~ an order of the court on custody issues as authorized by law.

Comment [A24]: Clean-up

~~3.~~ a. At the emergency custody hearing, the court shall determine custody of the child and order one of the following:

~~(1) a.~~ release the child to the custody of the child's parent, legal guardian or custodian ~~from whom the child was removed or other responsible adult without conditions or~~ under any such conditions as the court finds reasonably necessary to ~~ensure~~ protect the health, safety or welfare of the child, or

b. place the child in the custody of a responsible adult or licensed child placing agency under such conditions the court finds reasonably necessary to protect the health, safety or welfare of the child; or

c. continue the child in or place the child into emergency custody if continuation of the child in the child's home is contrary to the health, safety or welfare of the child, of the Department.

~~4.~~ obtain information from the parent, legal guardian or custodian necessary to identify and locate kinship placement resources. The court shall also order the parent, legal guardian or custodian, to complete an affidavit listing the names,

addresses and phone numbers of any parent, whether known or alleged, grandparent, aunt, uncle, brother, sister, half-sibling and first cousin and any comments concerning the appropriateness of the child's potential placement with such relative. If none exist, the court shall further require the parent, legal guardian or custodian to list any other relatives or persons with whom the child has had a substantial relationship or who may be a suitable placement for the child.

5. The court shall direct the parent, legal guardian or custodian to furnish the Department with a copy of the child's birth certificate within fifteen (15) days from the hearing if a petition is filed, unless otherwise extended by the court.

B. The office of the state court administrator shall create an affidavit form and make it available to each court responsible for conducting emergency custody hearings. The affidavit form shall contain a notice to the parent, legal guardian or custodian that failure to identify a parent or relative in a timely manner may result in the child being permanently placed outside of the home of the child's parent or relative. The affidavit form shall also advise the parent, legal guardian or custodian of the penalties associated with perjury and contempt of court. The original completed affidavit shall be filed with the court clerk no later than five (5) days after the hearing or as otherwise directed by the court and a copy shall be provided to the Department.

Comment [A25]: Allows courts and DHS to ascertain status of parent/relative more quickly

~~If such information indicates that within one (1) year of the emergency custody hearing the child had resided with a grandparent for six (6) months, and that such grandparent was the primary caregiver and provided primary financial support for the child during such time, the court shall provide notice and an opportunity to be heard at future hearings to such grandparent, and~~

Comment [A26]: This is being deleted because it is burdensome to the court and contrary to federal law that the current caretakers of the child received notice of hearings and opportunity to be heard.

(4) — require the Department to provide to any custodian or other person caring for the child information on Department of Human Services programs and services available to the child.

b. — If a child has been removed from the custodial parent of the child and the court, in the best interests of the child, is unable to release the child to the custodial parent, the court shall give priority for placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests. If the court cannot place the child with the noncustodial parent, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be documented in the court record.

Comment [A27]: Preferences to be placed in one statute and govern all proceedings.

NEW LAW – PLACEMENT PREFERENCES

A.1. When awarding custody or determining a child's placement, a preference shall be given to relatives and persons who have a kinship relationship with the child. The Department shall make diligent efforts to place the child with such persons and shall report to the court the efforts made to secure that placement. In cases where the Indian Child Welfare Act applies, the placement preferences of the Act shall be followed.

Comment [DoHS28]: New law setting forth preferences to be followed by the court when determining a child's placement/

Committee decided to move this new law here, but it will apply to all proceedings involving an alleged or adjudicated deprived child.

2. When two or more children are siblings, every reasonable attempt shall be made to place the siblings in the same home. In making a permanent placement, siblings shall be placed in the same permanent home or, if the siblings are separated, shall be allowed contact or visitation with each other; provided, however, the best interests of each sibling shall be the standard for determining the appropriate custodian or placement as well as the contact and visitation with the other siblings.

Comment [DoHS29]: Editor's Note: Article 7 has a section on sibling placement, but it may need to be included here as well since the court may make a direct placement to an individual.

2. In determining the appropriate custodian or placement for a child pursuant to subsection A of this section, the court and the Department shall consider, but not be limited to, the following factors:

- a. The ability of the person being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and to prevent others from influencing the child in regard to the allegations of the case;
- b. The ability of the person being considered to support the efforts of the Department to implement the permanent plan for the child;
- c. The ability of the person being considered to meet the child's physical, emotional and educational needs, including the child's need to continue in the same school or educational placement;

- d. Which person has the closest existing personal relationship with the child if more than one person requests to have the child or ward placed with them pursuant to this section;
- e. The ability of the person being considered to provide a placement for the child's sibling who is also in need of placement or continuation in substitute care;
- f. The wishes of the parent, the relative, and the child, if appropriate;
- g. The ability of the person being considered to care for the child as long as is necessary; and to provide a permanent home if necessary; and,
- h. The best interests of the child.

Comment [OSCN30]: I believe preference for sibling placements have been written in other sections; however, if not, then need a paragraph in this section to set forth preference for sibs to be placed together

Comment [OSCN31]: Or to become an adoptive home vs a temporary home if reunification is not possible.

B. 1. The Department must consider placement with a relative without delay and shall identify relatives of the child and notify them of the need for temporary placement and the possibility of the need for a permanent out-of-home placement of the child. The relative search shall be reasonable and comprehensive in scope and may continue until a fit and willing relative is identified.

2. The relatives must be notified of the need to keep the Department informed of their current address in order to receive notice when a permanent out-of-home placement is being sought for the child. A relative who fails to provide a current address may forfeit the right to be considered for the child's permanent out-of-home placement.

3. A decision by a relative to not participate in the child's placement planning at the beginning of the case or to cooperate with the Department to expedite procedures for placement of the child in the child's home may affect whether that relative will be considered for permanent placement of the child if the child cannot be safely returned to the home of the child's parent or parents.

Comment [OSCN32]: This subsection puts a time limitation to relative preference if relative does not step up.

C. 1. If the child's parent refuses to give the Department information sufficient to identify the maternal and paternal relatives of the child, the Court shall order the parent or parents of the child, subject to the penalties of perjury and contempt of court to provide the following information on a form affidavit prepared by the Office of the State Court Administrator and available at each judicial district:

- a. List of names, addresses, and telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the child;

b. List of names, addresses, telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, other relatives and kin who have a relationship with the child or other family members.

Comment [DoHS33]: This amendment addresses infants who don't yet have a relationship with anyone.

c. The original form affidavit shall be signed and dated by the parent or parents and shall be filed with the court within five (5) business days of the court's order. Copies shall be distributed by the court to the parties and the Department.

2. The court shall advise each parent that failure to identify the relatives in a timely manner may result in the child's being placed permanently outside of the home of the child's relatives, if the child cannot be safely returned to the home of the child's parent or parents.

Comment [OSCN34]: Procedure for court to order parents to provide relative information in writing – on a form that either AOC can create or perhaps Oversight committee.

D. The Department, while assessing the relatives for the possibility of placement, shall be authorized to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected date for the child's return home or other permanent placement as well as any other confidential information deemed necessary and appropriate to secure a suitable placement.

Comment [OSCN35]: Removes the issue of confidentiality when assessing placements

E. Following an initial placement with a relative, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to approved relatives who will fulfill the child's reunification or permanent plan requirements. The Department shall consider whether the relative has established and maintained a relationship with the child.

Comment [OSCN36]: Implies that DHS must assess all relatives – and be able to access them when placements fail.

F. If the child is not placed with a relative who has been considered for placement pursuant to this section, the Department shall advise the court, in writing, the reasons why that relative was denied and the written reasons shall be made a part of the court record.

Comment [OSCN37]: For court's review as well as refreshing court's memory for future reference.

G. The provisions of this section shall apply to all custody or placement proceedings which concern a child alleged or adjudicated to be deprived, including, but not limited to guardianship and adoption proceedings.

Comment [C038]: The preferences apply in all proceedings that concern custody or placement of an alleged or adjudicated deprived child.

§10-7003-2.4(C) NEW STAND ALONE SECTION (Release of child prior to emergency custody hearing; Time to file petition; Scheduling priority for children in emergency custody; Court determinations)

~~C.A~~ If it is determined by agreement of the The office of the district attorney and the Department of Human Services shall maintain records concerning a child in protective custody who is released prior to the emergency custody hearing. The records shall describe the reason for such release. that a child may be safely returned home prior to an emergency custody hearing, the following form or a

Comment [DoHS39]: Editor's Note: Modified to be consistent with 7003-2.1 which allows for courts to set conditions for release in standing orders yet still requires maintenance of records to show circumstances and allows each county to develop form and protocol.

~~substantially similar form shall be completed by the office of the district attorney and the Department and filed of record:~~

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF:

ALLEGED DEPRIVED CHILD(REN)

MEMORANDUM

CHILD WELFARE WORKER:

ASSISTANT DISTRICT ATTORNEY:

~~___ INVESTIGATION REVEALED ALLEGATIONS NOT CONFIRMED~~

~~___ SERVICES WERE OFFERED AND ACCEPTED~~

~~___ PARENT/CARETAKER HAS TAKEN APPROPRIATE STEPS TO PROTECT CHILD FROM HARM~~

~~___ OTHER:~~

NOTES:

CHILD(REN) RELEASED TO:

ASSISTANT DISTRICT ATTORNEY

~~I work for the Department of Human Services and am requesting that the District Attorney's Office release the above mentioned child(ren) from temporary emergency custody and that a Petition not be filed for court intervention.~~

DHS CHILD WELFARE WORKER.

~~G. 1. B Except as otherwise provided by this subsection, a A petition for a deprived child proceeding shall be filed and a summons issued within ~~five (5)~~ seven (7) judicial days from the date of assumption of custody; provided, however, such time period may be extended a period of time not to exceed ~~fifteen (15) calendar days from the date of assumption of custody of the child~~ if, the child is taken into custody, unless, upon request of the district attorney at the emergency custody hearing, the court determines there are compelling~~

reasons to grant additional time for the filing of the petition for a period of time not to exceed fifteen (15) calendar days from assumption of custody. ~~for a deprived child proceeding.~~

Comment [A40]: Longer time frame for filing will allow for better investigations and more option for alternatives to filing

2. If the a petition is not filed as required by this subsection, then the emergency custody order shall expire. The district attorney shall submit for filing in the court record a written record specifying the reasons why the petition was not filed and specifying to whom the child was released.

~~D. If a petition is filed within the time period specified in subsection C of this section, the emergency custody order shall remain in force and effect for not longer than sixty (60) days, except as otherwise provided by this subsection. The emergency custody order shall not be extended beyond sixty (60) days absent a showing that such further extension is necessary to ensure the health, safety or welfare of the child and is in the best interests of the child.~~

Comment [A41]: Should be requirement for time to hold adjudicatory not for expiration of emergency custody order.

~~E. 1C.~~ The court may hold additional hearings at such intervals as may be determined necessary by the court to provide for the health, safety or welfare of the child.

~~2. The parent, legal guardian or custodian of the child, the child's attorney, the district attorney and guardian ad litem if appointed shall be given prior adequate notice of the date, time, place and purpose of any hearing by the court.~~

Comment [A42]: Unnecessary to tell court to provide notice of hearings.

~~F. D.~~ In scheduling hearings, the court shall give priority to proceedings in which a child is in emergency custody.

~~G. E.~~ 1. No An order of the court providing for the removal of a child alleged to be deprived from the home of such child shall not be entered unless the court makes a determination:

- a. that continuation of the child in the child's home is contrary to the health, safety or welfare of the child, and
- b. as to whether or not reasonable efforts were made to prevent the need for the removal of the child from the child's home, or
- c. as to whether or not an absence of efforts to prevent the removal of the child from the child's home is reasonable because the removal is due to an alleged emergency and is for the purpose of providing for the health, safety or welfare of the child, or
- d. reasonable efforts to provide for the return of the child to the child's home are not required pursuant to Section 7003-4.6 of this title; provided, however, upon such determination, the court shall inform the parent that a permanency hearing will be held within thirty (30) days from the determination.

~~2. In all proceedings or actions pursuant to this subsection, the child's health, safety or welfare shall be the paramount concern.~~

Comment [A43]: This is federal language and should be placed in general section dealing with all hearings

NEW LAW – Restraining order upon allegation of child abuse; hearing; renewal of order

Comment [A44]: Taken from Oregon 2003 law. However, we can copy Title 22 PO for domestic violence procedure which provides for ex parte orders then hearings. This avoids the ex parte order and allow the court to hear evidence of same at show cause and issue an order to be served on the alleged perp. Could also be served in open court.

A. 1 At the emergency custody hearing or when a petition has been filed alleging that a child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides. The court may issue a restraining order only if the court finds that:

- a. There is a reasonable suspicion that abuse occurred and that the person to be restrained committed the abuse; and
- b. The order is in the best interest of the child.

Comment [A45]: Editor's Note: See above comment. Reasonable suspicion is the standard that is consistent with the most recent rulings from the 10th Circuit.

2. The court may also enter other appropriate orders including, but not limited to, orders that control contact between the alleged abuser, other children in the home and any other person.

3. The court shall include in an order entered under this subsection the following information about the person to be restrained to the extent known by the court at the time the order is entered:

- a. Name;
- b. Address;
- c. Age and birth date;
- d. Race;
- e. Sex;
- f. Height and weight;
- g. Color of hair and eyes, and;
- h. Any other identifying features such as tattoos.

4. The court may include in the order a provision that a peace officer accompany the restrained person to the household when it is necessary for the restrained person to remove personal property.

B. If the court enters an order under this section:

1. The clerk of the court shall provide without charge the number of certified true copies of the order and petition, if available, necessary to effect service and shall deliver same to the sheriff or other person qualified to serve the order for service upon the person to be restrained; and

2. The sheriff or other person qualified to serve the order shall serve the person to be restrained personally unless that person is present at the hearing. After accepting the order, if the sheriff or other person cannot complete service within ten (10) days, the sheriff or other person shall file a return to the clerk of the court showing that service was not completed and the reason for such non-completion.

C. Within thirty (30) days after an order is served under this section, the restrained person may file a written request with the court and receive a court hearing on any portion of the order. If the restrained person requests a hearing under this subsection:

1. The court shall notify the parties and the restrained person of the date and time of the hearing; and

2. The court shall hold a hearing within 21 days after the request for hearing is filed with the court and at the conclusion of the hearing may cancel or modify the order.

D. 1. Within twenty-four (24) hours of the return of service of the restraining order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the court. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning the restraining order shall be sent by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.

2. Any law enforcement agency receiving copies of the documents listed in subsection (1) of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the restraining order in the National Crime Information Center database.

E. A restraining order issued pursuant to this section remains in effect for a period of one (1) year or until the order is sooner modified, amended or terminated by court order.

F. A court that issued a restraining order under this section may renew the order for a period of up to one (1) year if the court finds that there is probable cause to believe the renewal is in the best interest of the child. The court may renew the order on motion by the State or the child's attorney alleging facts supporting the required finding. If the renewal order is granted, subsections (B) and (C) of this section apply.

G. If a restraining order issued pursuant to this section is terminated before its expiration date, the clerk of the court shall promptly deliver a true copy of the termination order to the sheriff. The sheriff shall promptly remove the original order from the National Crime Information Center database.

H. Any person who has been served with the restraining order and is in violation of such restraining order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment.

§10-7003-8.5. Immediate assumption of custody to protect child's health or welfare.

Nothing contained in the Oklahoma Children's Code shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical or ~~mental~~ behavioral health treatment, to protect the child's health, safety or welfare.

NOTE: §7003-3.7 HAS FISCAL IMPACT.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – COURT PROCEEDINGS
PART 3 – PETITIONS, SUMMONS, APPOINTMENT OF COUNSEL & OTHERS

§10-7003-3.1. Petitions.

A. 1. A petition in a ~~deprived child~~ proceeding ~~alleging a child to be deprived~~ may be filed by the district attorney to determine if further action is necessary. The proceeding shall be entitled "In the matter of _____, an alleged deprived child".

Comment [CO1]: Language clean-up.

2. The petition shall be verified and may be upon information and belief. The petition shall set forth:

- a. with particularity, facts which bring the child within the purview of this article,
- b. the name, age date of birth and residence of the child,
- c. the names and residences of the child's parents,
- d. the name and residence of the child's legal guardian, if there is one,
- e. the name and residence of the person or persons having custody or control of the child,
- f. the name and residence of the nearest known relative, if no parent, legal guardian or custodian of the child can be found, and

Comment [CO2]: Language clean-up.

g. ~~the relief requested and an endorsement of witnesses intended to be called~~
~~by the petitioner~~ including, but not limited to, or where applicable:

Comment [CO3]: The type of relief being sought needs to be specified in the petition.

- i) an adjudication that the child is deprived;
- ii) a termination of parental rights;

iii) the entry of an order for child support; and,

iv) a judicial determination of the child's paternity.

3. ~~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.~~

Comment [C04]: Stricken because it is included in sub-paragraph 2 above.

4. If any of the facts herein required are not known by the petitioner, the petition shall so state, along with the reasons why such facts are not known to petitioner.

~~B. 1. A petition for termination of parental rights may be filed by the district attorney or the child's attorney.~~

Comment [C05]: This entire subsection is being deleted because it is misplaced here & belongs in the sections dealing with termination of parental rights (TPR).

~~2. A petition for termination of parental rights shall be filed by the district attorney for those petitions required to be filed pursuant to the provisions of Section 7003-4.7 of this title.~~

~~3. If the child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 7003-4.7 of this title.~~

~~B.C. A petition alleging a child to be a minor in need of treatment shall be filed by a district attorney pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act pursuant to Title 43A of the Oklahoma Statutes, Section 5-501 *et seq.*, or any successor statute.~~

Comment [C06]: Language clean-up & providing for reference to successor statute.

~~C.D. A copy of the petition in a deprived child proceeding alleging a child to be deprived shall be attached to and delivered with the summons.~~

Comment [C07]: Language clean-up.

~~DE. 4.~~ Any petition filed by the district attorney shall be signed by the district attorney or authorized assistant.

Comment [C08]: This is covered in the TPR sections.

~~2. A petition for termination of parental rights filed by the child's attorney shall be signed by the child's attorney and the district attorney if joined as a party to the petition pursuant to the provisions of subsection B of this section.~~

§10-7003-3.2. Repealed by Laws 1998, c. 421, § 34, emerg. eff. June 11, 1998.

§10-7003-3.3. Amendment of petition.

A. No pleading subsequent to the petition ~~for a deprived child proceeding~~ alleging a child to be deprived 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,~~ The court shall liberally allow the petition to be amended at any time to add, or amend modify or supplement factual allegations that form the basis for the cause of action up until seven (7) days prior to the adjudicatory hearing. The court may grant leave to amend the petition upon a showing of good cause after that date and prior to the adjudicatory hearing. The court may allow amendment of the petition to conform with the evidence at any time prior to the court's adjudicatory ruling. In all cases in which the court has granted leave to amend based on new evidence or new allegations, the court shall permit the respondent a reasonable and adequate opportunity to prepare provided that the court shall grant the parties such additional time to prepare as may be required to insure a

Comment [C09]: This amendment establishes a time frame to amend the petition, but provides flexibility as circumstances warrant regarding new evidence or allegations while giving the respondent adequate time to defend.

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~~ The court shall not amend the adjudicatory category prayed for in the petition.

(C) In any case in which the allegations contained within the original petition have been sustained and a child is found to be a deprived child and the State alleges new facts or different conditions are discovered sufficient if sustained, to support a finding to state that the child is a deprived child, the State may file a subsequent petition entitled "Post-Adjudication Petition". This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations.

1. All procedures and hearings required for an original petition are applicable to a post-adjudication petition filed under this section. The post-adjudication petition shall be filed in the same case as the original petition.

§10-7003-3.4. Summons - Contents - Service - Taking child into custody.

~~A. 1. After a petition for a deprived child proceeding has been filed, unless the parties provided for in this section voluntarily appear, a summons shall be issued. Upon the filing of the petition the court shall schedule a hearing and shall issue a summons requiring the parents, legal guardian, custodian, the child if the child is twelve or more years of age, and any other persons the court determines to be proper or necessary parties to the proceedings to appear personally before the court at the date, time and place stated in the summons. The court may endorse upon the summons an order directing the parent, guardian, custodian or other~~

Comment [C010]: This new section permits the filing of a post-adjudication petition upon new evidence being discovered following adjudication of the original petition, with all procedures & safeguards applying as required for an original petition.

Comment [C011]: This amendment clarifies who may be summoned to court upon the filing of a petition and requires a hearing date & time to be set.

person having the physical custody or control of the child to bring the child to the hearing.

2. ~~The summons shall recite briefly the nature of the proceeding with the phrase "as described more fully in the attached petition" and shall require 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~~ be attached to a copy of the petition and shall advise the parties of the right to counsel, including the right of the child's parent or legal guardian, to court appointed counsel if indigent.

Comment [C012]: This amendment clarifies the parties who will receive a summons, petition & who may have court appointed counsel.

3. ~~The summons shall state the relief requested, including notice that child support may be ordered or modified and that the child's paternity, if at issue, may be established.~~

Comment [C013]: Language clarified regarding content of the summons.

4. The summons shall also contain, in type at least as large as the balance of the document, the following or substantially similar language: "FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS DEPRIVED CHILDREN AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD."

B. 1. ~~The summons shall be served on the person who has legal custody of the child. If the child has reached the age of twelve (12) years, a copy shall be served on the child. A party other than the child may waive service of summons in writing or by voluntary appearance at the hearing. Child's~~ A child's counsel may waive service of summons on the child's behalf.

Comment [C014]: Waiver of summons clarified.

~~2. If the person who has legal custody of the child is other than a parent, legal guardian or custodian of the child, a copy of the summons shall be served on the parent, legal guardian or custodian, or all, as hereinafter provided. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate.~~

Comment [CO15]: This language is deleted because it is covered in above sections.

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

Comment [CO16]: This language is deleted because it is covered in above sections.
Approved 02/08/08

D. 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 such person.

~~E. If after a petition has been filed, it appears that the child is in such condition or in such surroundings that the child's welfare requires that custody of the child be immediately assumed by the court, the judge may immediately issue an order authorizing the taking of the child into emergency custody.~~

Comment [CO17]: This section will be moved to another section dealing with children being taken into custody.
Approved 02/08/08

§10-7003-3.5. Service of summons.

~~A. 1. Service of summons shall be made by personal delivery, by mail or by publication as provided for in civil actions pursuant to Title 12 of the Oklahoma Statutes, Section 2004 or any successor statute or service may be made by certified mail to such person's last known address, requesting a return receipt from the addressee only.~~

Comment [CO18]: Clarification that a summons must be served according to the rules of civil procedure.

~~2. If 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~~

Comment [CO19]: Language on publication notice moved to its own subsection.

once in a newspaper of general circulation in the county, and a copy of the summons shall be mailed by regular first-class mail to the last known address of the parent, legal guardian or custodian. The court shall not hold the adjudication hearing until at least forty-eight (48) hours after the service of the summons.

Comment [CO20]: Moved here from original paragraph B1, for clarity.

Comment [CO21]: This was added for clarification.

Comment [CO22]: Moved here from original paragraph B2 for clarity.

3. If the parent or legal guardian is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons.

4. The State shall conduct a distinct and meaningful search of all reasonably available sources to locate and notify the parents and legal guardians of proceedings being held pursuant to this Chapter, provided, that a hearing shall not be delayed if a parent or legal guardian cannot be located.

Comment [CO23]: Efforts must be made to notify noncustodial parents, however proceedings will not be delayed if they can't be located.

Comment [CO24]: This language is consistent with the publication language used in Title 12.

B. 1. The court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent, legal guardian or custodian.

Comment [CO25]: Subsection B1 & B2 have been moved to A1 & A2. The remainder of this subsection on publication notice has been re-written to be more consistent with the publication notice requirements of civil actions in general.

Before service by publication is authorized, the State shall file an affidavit with the court stating that after a distinct and meaningful search of all reasonably available sources, the child's parent or legal guardian could not be identified or located, as applicable, and further stating the diligent efforts that were made to identify, locate and serve the party. The affidavit shall be sufficient evidence of the diligence exercised by the State to identify or locate party who is the subject of the publication notice. An affidavit prepared by the Department describing a distinct and meaningful search of all reasonably available sources to locate a

party may be adopted by the State as evidence of additional efforts made to locate or identify the party.

2. If the parent is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent, legal guardian or custodian. Upon complying with this subsection, the State may obtain an order from the court authorizing service to be made upon the party by publication. A copy of the petition and summons shall also be mailed by regular first-class mail to such party at his or her last known place of residence. Service by publication is complete on the date of the last publication as required by subparagraph 3.

3. The publication notice may be directed to all persons known, alleged, presumed or claiming to be the father, mother or legal guardian of the child. If a party's name is unknown, the notice shall be directed to the unknown father, mother or legal guardian, as applicable, and such notice when published pursuant to this subsection shall apply to, and be binding upon, those persons whose names are unknown. The notice shall contain the name of the court and the case number, the initials of the child who is the subject of the proceedings, the date and location of the birth of the child, the name of the child's mother if known, the time and date of the hearing and the purpose of the hearing. The notice shall also contain, in type at least as large as the balance of the document, the following or substantially similar language: **FAILURE TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD AS A DEPRIVED CHILD AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY**

Comment [DoHS26]: The publication notice contained in this section applies when the State is seeking only a deprived adjudication. The section on TPR will deal with the adjudication/immediate termination issue.

OF THIS CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD.” An affidavit showing publication of the notice shall be filed with the court clerk. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated in the notice.

4 Service by publication must be made by publishing a notice once a week for three (3) consecutive weeks, with the first publication notice being at least twenty-five (25) days prior to the date fixed for the hearing. Service shall be made in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county.

C. Notice by publication may proceed simultaneously with efforts to serve notice by personal delivery or by mail, when the court determines there is reason to believe that service by personal delivery or by mail will not be successful.

D. Costs of publication shall be paid by the court fund and assessed as costs against the child’s parents and legal guardian as applicable.

Comment [C027]: This section was added to clarify the responsibility for fronting the initial costs of publication.

~~1. If notice is published, the court shall not hold the hearing until at least ten (10) days after the date of publication.~~

Comment [C028]: This language is being deleted because the mechanics of publication notice is contained in subsection B.

~~2. If one or more persons must be served by publication, the court may delay 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.~~

~~3. An order determining that a child is deprived shall not become final until thirty (30) days after the date of the publication of the notice.~~

§10-7003-3.6. Failure to appear without reasonable cause - Consent to adjudication - Contempt - Warrants.

A. Failure of a person summoned as provided in this part to respond or appear without reasonable cause constitutes the person's consent to ~~a deprived child adjudication~~ an adjudication of the child to be deprived.

B. If any person summoned as provided in this part fails to respond or appear without reasonable cause, such person may be held in contempt of court.

C. 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 health, safety or welfare of the child requires that the child should be brought into the custody of the court, a warrant may be issued against the parent, legal guardian or custodian of the child, or ~~against the child.~~

Comment [CO29]: Language clean-up.

§10-7003-3.7 Appointment of counsel - Guardians ad litem - Court-appointed special advocates - Applicability of section.

A. 1. a. ~~If the parents legal guardian or custodian~~ a parent or legal guardian of the child requests an attorney and is found to be ~~without sufficient financial~~ means indigent, counsel shall may be appointed by the court at the emergency custody hearing and shall be appointed if a petition has been filed alleging that the child is a deprived child ~~or if termination of parental~~

Comment [DoHS30]: Editor's Note: This section has fiscal impact on capping the number of parents & children court appointed counsel can represent; also provides for mileage for court appointed child's counsel in certain cases.

Comment [CO31]: This amendment permits the court to appoint counsel at the emergency custody hearing & clarifies that only a parent or legal guardian is entitled to court appointed counsel once a petition is filed.

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~~ the parent, legal guardian or custodian.

b. ~~The court shall not be required to appoint an attorney for any person other than for the parents~~ a parent, legal guardian or custodian or legal guardian of the child pursuant to the provisions of this paragraph.

Comment [C032]: Clarification that the appointment of counsel is mandatory only for a parent or legal guardian.

c. ~~The court shall ensure that a court-appointed attorney counsel for the a~~ parent shall maintain a caseload consistent with standards recommended by the American Bar Association.

Comment [C033]: This amendment addresses the need to keep caseloads within ABA recommended standards.

2. a. ~~The court may appoint an attorney or a guardian *ad litem* for the child when an emergency custody hearing is held, provided~~ Whenever when a petition is filed pursuant to the provisions of this part alleging the child to be deprived, the court shall appoint a separate attorney for the child, who shall not be a district attorney, regardless of any attempted waiver by the parent, legal guardian or custodian of the child of the right of the child to be represented by counsel. The parent, legal guardian or custodian shall not select the child's attorney. The child's attorney shall be independent of and not selected by the district attorney, the child's parent, legal guardian or custodian. If financially capable, the parent, legal guardian or custodian shall reimburse the Court Fund for the services of a court-appointed attorney for the child.

Comment [C034]: This new language allows the court discretion to appoint either an attorney or GAL for the child at any emergency custody hearing and ensures that after the petition has been filed the child will have court appointed counsel who is independent of any other party.

b. ~~The court shall ensure that a court-appointed attorney for the child shall~~ maintain a caseload consistent with standards recommended by the National

Comment [C035]: This amendment addresses the need to keep caseloads within NACC recommended standards.

Association of Counsel for Children. The attorney appointed for the child shall make arrangements to meet with the child as soon as possible after receiving notification of the appointment. Except for good cause shown, the attorney shall meet with the child ~~not less than twenty-four (24) hours~~ prior to any hearing in such proceeding. The attorney may speak with the child over the telephone if a personal visit is not possible due to exigent circumstances. If a meaningful attorney-client relationship between the child and the attorney is prohibited due to age or disability of the child, the attorney shall contact the custodian or caretaker of the child prior to the hearing.

Comment [C036]: Language deleted to provide more flexibility in the attorney-child relationship.

- c. ~~The attorney shall be given access to all reports, records and other information relevant to the case and to any reports of examination of the child's parents, legal guardian or custodian made pursuant to this section.~~

Comment [C037]: This language is deleted because the records statutes provide for attorney access to all records.

The attorney shall represent the child and any expressed interests of the child. The attorney shall make such further inquiry as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the interests of the child.

3. The attorney shall be allowed a reasonable fee for such services as determined by the court, ~~as authorized by law.~~

Comment [C038]: This language was stricken to allow the court discretion.
Approved 05-09-08

4. When an attorney is required to travel to more than one district court location in order to represent a child or children the attorney has been court appointed to

Comment [C039]: A mileage reimbursement was added because in some rural areas the child's attorney may travel many miles and in multiple counties in order to represent a child.

represent, the court may in its discretion allow the attorney a reasonable reimbursement for mileage.

5. The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action.

Comment [DoHS40]: Editor's Note: This language is added to ensure the child is always represented until the case is over.

B. 1. ~~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 or for any other action related to the child.~~

Comment [CO41]: This language is being deleted because this topic is covered in A2 above.

2. ~~The~~ After a petition is filed, the court shall appoint a guardian *ad litem* upon the request of the child or the attorney of the child, and may appoint a guardian *ad litem sua sponte* or upon the request of the Department of Human Services, a licensed child-placing agency, or any other another party to the action.

Comment [CO42]: This language clarifies when the appointment of a GAL is mandatory or discretionary.

3. A guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, the child's attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the child.

4. The guardian ad litem shall be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview

parents, foster parents, health care providers, child protective services workers and any other person with knowledge relevant to the case,

b. advocate for the child's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. ~~maintain the confidentiality of information related to a case as required by Article 7 of the Oklahoma Children's Code,~~

Comment [C043]: This language is unnecessary since Article 7 already requires confidentiality of information.

~~cd.~~ monitor the child's best interests throughout any judicial proceeding, and

~~de.~~ present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

5. The guardian ad litem shall be given access to the court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to the laws relating to child abuse and neglect including reports generated by service providers.

6. ~~On or before December 31, 2007, the Administrative Director of the Courts shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The Administrative Director of the Courts shall provide public access to the standard operating manual and shall periodically review and revise the manual as deemed necessary.~~

Comment [C044]: This language is deleted as unnecessary because paragraph 4 is sufficient.

C. 4. Whenever a court-appointed special advocate program is available to the court to serve as a guardian ad litem, priority ~~shall~~ may be given to appointment of the court-appointed special advocate to serve as guardian ad litem for the child regardless of whether a guardian ad litem has been requested pursuant to the provisions of this subsection.

Comment [CO45]: The court should have discretion to determine on a case by case basis the type of GAL that may be needed.

2. ~~A Court-Appointed Special Advocate Program shall be made available to each judicial district.~~

Comment [CO46]: Deleted because it encroaches on judicial discretion and is incapable of enforcement.

3. For purposes of the Oklahoma Children's Code, ~~the terms a~~ "court-appointed special advocate" and a "guardian ad litem" shall have the same function except as otherwise provided by law. In like manner, a court-appointed special advocate, except as specifically otherwise provided by law or by the court, shall have the same power, duties and responsibilities as assigned to a guardian ad litem by law and shall have such other qualifications, duties and responsibilities as may be prescribed by rule by the Supreme Court.

Comment [CO47]: It is the role and not the term that has the same function.

34. A court-appointed special advocate shall serve without compensation.

D. 1. 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.

2. Any person serving in a management position of a court-appointed special advocate organization, including a member 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 court-appointed special advocate organization advocates,
managers, or directors.

~~E. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.~~

Comment [C048]: Deleted as surplusage.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – COURT PROCEEDINGS
PART 4 - DISCOVERY AND PRETRIAL PROCEEDINGS

NEW LAW – Discovery.

A. The provisions of the Oklahoma Discovery Code and the Rules for District Courts of Oklahoma do not apply to juvenile proceedings except as provided by this section.

B. The court may order the parties to exchange information that is not work product and not privileged, including:

1. The Department's assessment and investigation records; provided, all information that identifies the reporter of alleged child abuse or neglect shall be redacted;
2. Law enforcement reports;
3. Any video or audio recording of an interview with the child alleged to be deprived;
4. Any exhibit any party intends to introduce at trial; and,
5. The names of any witnesses any party may call and a synopsis of the expected testimony.

C. The court may in its discretion enter a scheduling order, order mediation and conduct status and settlement conferences as needed during deprived proceedings.

D. All information produced, exchanged or used during the pendency of the deprived action is confidential and shall be subject to a protective order. The disclosure or use of the information for any other purpose is prohibited except as permitted by law.

Comment [DoHS1]: Editor's Note: New law that provides for an exchange of confidential information among the parties under a protective order; allows the court to hold status & settlement conferences & order mediation.

NOTE: §7003-8.4 HAS FISCAL IMPACT

OKLAHOMA CHILDREN'S CODE

**ARTICLE 4 – DISTRICT COURT PROCEEDINGS IN DEPRIVED CASES
Part 5 Conduct of Hearings**

§10-7003-8.4. District attorney or child's attorney to act as petitioner.

A. Except as otherwise provided by this section this Code, the district attorney shall prepare and prosecute any case or proceeding every hearing and proceeding within the purview of the Oklahoma Children's Code, and shall act as petitioner in all cases. If the Office of District Attorney fails to perform its duties, the court may appoint a special prosecutor to perform such duties and tax the costs to the district attorney.

Comment [DoHS1]: Editor's Note: This section has fiscal impact.

Comment [DoHS2]: Section amended to clarify that the DA must prosecute all aspects of the case, unless excepted out by specific provisions, i.e., the DA is not required to join in the child's prosecution of permissive TPR proceedings.

B. 1. A petition for termination of parental rights may be filed by the district attorney or the attorney of a child alleged or adjudicated deprived.
2. If the child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for these petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 15 of this act.

Comment [DoHS3]: This entire sub-section B is being moved to the TPR section.

§10-7003-3.8. Jury trial Trial on petition.

A parent entitled to service of summons, the state or a child shall have the right to demand a trial by the court when a petition alleging a child to be deprived has been filed jury only in the following circumstances:

Comment [DoHS4]: Amendments in this section clarify that a bench trial is permitted when a child is alleged to be deprived.

1. When the initial petition to determine if a child is deprived also contains a request for termination of parental rights; or
2. When, following a hearing in which the child is adjudicated deprived, a request for termination of parental rights is filed by the state or the child. The demand for a jury trial shall be granted unless waived, or the court on its own motion may call a jury to try any such case. Such jury shall consist of six (6) persons.

§10-7003-4.1. Conduct of hearings.

A. All cases initiated by the filing of a petition alleging that a child is deprived of ~~deprived children~~ shall be heard separately from the trial of other cases against adults. The adjudicative hearings and hearings for termination of parental rights shall be conducted according to the rules of evidence.

Comment [DoHS5]: Language amended for clarity.

1. a. Except as otherwise provided by this paragraph, all deprived proceedings 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 except as otherwise determined by the court.

Comment [DoHS6]: This amendment is needed to insure that even interested persons may be excluded by the court, i.e. those who are disruptive or whose presence would not be in the child's best interests, etc...

b. To the extent that deprived proceedings involve discussion of confidential information from any child abuse or neglect report and record, or any information obtained from the Department of ~~Human Services~~ concerning a child or family who is receiving Title IV-B child welfare services, Title IV-E foster care or adoption assistance, the confidentiality requirements of those programs apply. Accordingly, such information shall not be discussed in open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript shall be kept confidential.

2. 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 or as otherwise provided by law.

3. Uniform orders shall be used by the court in all deprived proceedings. The forms shall be prescribed and published by the Administrative Office of the

Courts. The Supreme Court Juvenile Justice Oversight and Advisory Committee, the District Attorneys Council, and the Department of Human Services shall assist in the development of the orders. In addition to the findings and determinations required to be made by the court pursuant to the Oklahoma Children's Code, the forms shall include a section which will require the court to memorialize the recommendations of the parties and participants made at the hearing as it relates to custody or placement of the child or children.

4. If authorized by the court, any proceeding held pursuant to the Oklahoma Children's Code may be conducted via teleconference communication; provided that when a parent or child appears for a proceeding via teleconference, the attorney representing that parent or child must personally appear at the hearing. For purposes of this paragraph, teleconference communication means participation in the hearing by interactive telecommunication by the absent party, those parties present in court, the attorneys and others deemed to be necessary participants to the proceeding including, but not limited to, foster parents and facility staff where a child may be receiving care or treatment.

Comment [DoHS7]: The paragraph was added in order that hearings may be conducted by telephone when a party or other necessary participants are unable to appear in person.

~~B. A child who is determined to be competent to testify shall not refuse to be a witness in a hearing to determine whether or not the child is deprived, unless the privilege against self-incrimination is invoked. The testimony of the child may be given as provided by this part or as otherwise authorized by law for the protection of child witnesses.~~

Comment [DoHS8]: These amendments are "clean-up" of unnecessary language.

C. A decision determining a child to be deprived must be based on sworn testimony and the child must have the opportunity for cross-examination unless the facts are stipulated.

~~5-XXX~~ (NEW LAW **Mediation**)

Comment [DoHS9]: This new subparagraph clarifies that may be ordered or elected during any stage of the case.

At any stage of the proceedings, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceedings. An alternative dispute resolution proceeding under this chapter include family group conferencing, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. Any resolution reached by the parties through an alternative dispute resolution proceeding shall not be binding on the court.

§10-7003-4.2. Admissibility of prerecorded statements of child age 12 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~~ brought within the purview of the Oklahoma Children's Code in which a child twelve (12) years of age or younger is alleged to ~~have been abused~~ be deprived, and shall apply only to the statement of that child or ~~other~~ another 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~~ in a hearing conducted outside

Comment [CO10]: Language has been added from 12 O.S. §2803.1 so that this sub-section will be consistent with the evidence code.

the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and

a. The child either:

- i. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of Title 12 of the Oklahoma Statutes, or
- ii. is unavailable as a witness as defined in Section 2804 of Title 12 of the Oklahoma Statutes. When the child is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

2. No attorney for any party is present when the statement is made, although, if appropriate facilities are utilized that allow observation of the child without the child's knowledge or awareness in any way, any such attorney may be present as an observer, but not as a participant, and no such attorney shall have any right to intervene, object or otherwise make his or her presence known to the child before, after or during the making of the child's statement;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

Comment [CO11]: This amendment would allow a party attorney to observe the statement being made by the child without the child's awareness and without any participation by the attorney.

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 otherwise 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;
8. Each party to the proceeding is afforded an opportunity to view the recording before the recording is offered into evidence; and
9. A copy of a written transcript of the recording transcribed by a licensed or certified court reporter is ~~provided~~ available to the parties.

10. A statement may not be admitted under this sub-section unless the proponent of the statement makes known to the parties an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the parties with an opportunity to prepare to answer the statement.

Comment [CO12]: Language has been added from 12 O.S. §2803.1 so that this sub-section will be consistent with the evidence code.

§10-7003-4.3. Taking testimony of child age 12 or under in room other than courtroom - Recording.

Comment [CO13]: The changes made in this section are for clarity & to enhance protection of child witnesses.

A. This section shall apply only to a proceeding ~~affecting the parent-child, guardian-child or family relationship~~ brought under the Oklahoma Children's Code in which a child ~~twelve (12) years of age or younger~~ at the time of the

testimony is alleged to ~~have been abused,~~ be deprived and shall apply only to the testimony of that child or other child witness.

B. When appropriate facilities are reasonably available, ~~The~~ the court ~~may~~ shall, 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 the testimony of the child. 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 the testimony of the child, but does not permit the child to see or hear them.

C. The court ~~may~~ shall, 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.

E. If the testimony of a child is taken as provided in subsections B or C of this section, the attorney for any parent shall, on request, be permitted a recess of sufficient length to allow the attorney to consult with his client prior to conclusion of the testimony.

Comment [CO14]: This is added to address the due process objection raised most commonly by parents' attorneys to off-site or recorded testimony of a child: that the attorney's client is denied the opportunity to assist his attorney during the testimony.

§10-7113. Admissibility of evidence.

Comment [CO15]: This section has been moved to the OCC from the Oklahoma Child Abuse Report and Prevention Act.

In any proceeding resulting from a report made pursuant to ~~the provisions of the Oklahoma Child Abuse Report and Prevention Act~~ Section XXXX of this title or in any proceeding where such a report or any contents of the report are sought to be introduced into evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician patient privilege or similar privilege or rule against disclosure.

NEW SECTION: LIMITED IMMUNITY FROM PROSECUTION
New Mexico Children's Code: 32A-4-11. Use immunity.

A. At any stage of a proceeding under the Oklahoma Children's Code, the parent or legal guardian, the child's attorney or the Office of District Attorney may apply for use immunity for a parent or legal guardian for in-court testimony. The in-court testimony of an immunized parent or legal guardian shall not be used against that parent or legal guardian in a criminal prosecution; provided, however, that the parent or legal guardian may be prosecuted for perjury that occurs during the parent's or legal guardian's testimony in the deprived proceeding.

Comment [DoHS16]: Editor's Note: Immunity provisions may result in the parent engaging in treatment more readily & that would result in quicker permanency for the child.

B. At any stage of a proceeding under the Oklahoma Children's Code, the child's attorney or the Office District Attorney may apply for use immunity for any records, documents or other physical objects produced by the immunized parent or legal guardian in the deprived proceeding, production of which was compelled by a court order.

C. At any stage of a proceeding under the Oklahoma Children's Code, the child's attorney or the Office of District Attorney may apply for use immunity for a parent or legal guardian for any statement that a parent or legal guardian makes in the course of a court-ordered psychological evaluation or treatment program to the professional designated by the Department or authorized by the court in furtherance of the court's order. Such immunity shall attach only to those statements made during the course of the actual evaluation or treatment and specifically does not attach to statements made to Department employees, agents or other representatives in the course of the investigation of alleged child abuse, neglect or abandonment.

D. Any other information available to the professional designated by the Department or authorized by the court to perform the court-ordered evaluation or treatment shall not be the subject of any application or order for immunity.

E. All immunized statements referred to in Subsection C that are subsequently reduced to writing shall be deleted or redacted before the information is released to law enforcement officers.

F. Use immunity orders shall not be entered nunc pro tunc.

G. The party applying for use immunity for a parent or legal guardian shall request a hearing on the application and shall give at least two (2) judicial days notice to all parties. In the event the parent or legal guardian or the child's attorney applies for use immunity for a parent or legal guardian, the Office of District Attorney shall have standing to object to the order for immunity.

OKLAHOMA CHILDREN'S CODE

ARTICLE 4 – DISTRICT COURT PROCEEDINGS IN DEPRIVED CASES
Part 6 Adjudication Hearing

§10-7003-XX. Adjudication Hearing. NEW LAW

A. The court shall hold an adjudication hearing following the filing of a petition alleging that a child is deprived. Such hearing shall be held not more than ninety (90) calendar days following the filing of the petition. The child and the child's parents, guardian or other legal custodian shall be entitled to not less than twenty (20) days prior notice of such hearing.

Comment [DoHS1]: New language detailing time frames for adjudication of petition & delays

B. 1. The child shall be released from emergency custody in the event the adjudication hearing is delayed beyond ninety (90) days from the date the petition is filed unless the court issues a written order with findings of fact supporting a determination that:

- a. There exists reasonable suspicion that the child's health, safety or welfare would be in imminent danger if the child were returned to the home; and,
- b. There exists either an exceptional circumstance to support the continuance of the child in emergency custody or the parties and the guardian ad litem, if any, agree to such continuance.

2. If the adjudicatory hearing is delayed pursuant to this sub-section, the emergency custody order shall expire unless the hearing on the merits of the petition is held within 180 days after the actual removal of the child.

C. The release of a child from emergency custody due to the failure of an adjudication hearing being held within the time frame prescribed by this section shall not deprive the court of jurisdiction over the child and the parties or authority to enter such temporary orders as the court deems necessary to provide for the health, safety and welfare of the child pending the hearing on the petition.

Comment [DoHS2]: This subsection describes the 3 ways a petition may be adjudicated.

B. D. At the adjudication hearing, if the court finds that it is in the best interest of the child, the court shall:

1. Accept a stipulation by the child's parent, guardian or other legal custodian that the facts alleged in the petition are true and correct;
2. Accept a stipulation by the child's parent, guardian or other legal custodian that, if the state presented its evidence supporting the truth of the factual allegations in the petition to a court of competent jurisdiction, such evidence would be sufficient to meet the state's burden of proving by a preponderance of the evidence that such factual allegations are true and correct; or
3. Conduct a non-jury trial to determine whether the state has met its burden of proving by a preponderance of the evidence that the factual allegations in the petition are true and correct.

Comment [DoHS3]: This part of is moved from §10-7003-4.1(C).

- E. 1. A decision determining a child to be deprived in a non-jury trial must be based on sworn testimony; and,
2. The child, as a party to the proceeding, must be given the opportunity to cross-examine witnesses and to present a case in chief if desired.

§10-7003-4.4. Allegations of petition not supported by evidence.

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

Comment [DoHS4]: Amendments in this section for clarification that the burden of proof for adjudications will be by a preponderance. ICWA cases will still require clear & convincing evidence for a foster care placement (and qualified expert witness testimony that continued custody of the child by the parent would likely result in serious emotional or physical damage to the child).

§10-7003-4.5. Order of adjudication finding child to be deprived.

A. If the court finds that

1. the factual allegations of ~~in~~ a petition ~~alleging~~ filed by the state alleging that a child ~~to be~~ is deprived are supported by ~~the~~ a preponderance of the evidence;
2. that such allegations are sufficient to support a finding that the child is deprived; and,
3. that it is in the best interests of the child and the public that the child be declared to be a deprived child and made a ward of the court,

Comment [DoHS5]: Sets out the criteria for a judicial finding that a child is deprived.

the court shall sustain the petition, and shall make an order of adjudication finding the child to be deprived and shall adjudge the child as a ward of the court.

B. The order of adjudication shall include a statement that advises the parent that failure to appear at any subsequent hearing or comply with any requirements of the court may ~~ultimately result in the loss of custody of the child or the~~ termination of parental rights to the child.

Comment [DoHS6]: These amendments clarify the consequences of a parent's failure to appear or comply with court orders.

C. When a child has been adjudicated deprived, the court shall enter a dispositional order pursuant to the provisions of Section ~~7003.5-5~~ XXXX of this title.

D. When a child has been adjudicated deprived, the parent or other legal custodian shall register with the court clerk within two days of the adjudication and provide a valid, current address or other place where they may be served with a summons. In the event that the address or place where they may be served a summons changes during the course of the litigation, the parent shall have the obligation of filing a change of address form with the clerk. In the event that an amended petition or motion is filed, the address listed on the form of the court clerk shall constitute the last known address of the parent unless the state has actual knowledge of the parent's location.

Comment [DoHS7]: This new language requires the parent to register current & any change of address with the court clerk.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – DISTRICT COURT PROCEEDINGS IN DEPRIVED CASES
Part 7 Dispositional Hearings

(All Sections)

§10-7003-8.7. Parents to reimburse costs for care of deprived child.

~~A. In any postadjudicatory hearing concerning the status of a child, the court, if the court determines the parent is able to pay, shall order the parents of any deprived child to:~~

Comment [DoHS1]: Language clean-up.

Upon notice to the parent or other person legally obligated to support the child and upon an opportunity to be heard and a finding of financial ability to pay, the court may order the parent or other person to:

1. Reimburse the Department of ~~Human Services~~, in whole or in part, for any costs and expenses incurred by the Department in providing any services or authorizing actions taken pursuant to the Oklahoma Children's Code for the child including, but not limited to, all or some part of placement services, medical care and mental health services of a child, as authorized by law;
2. Reimburse any law enforcement agency, in whole or in part, for any costs or expenses incurred by the law enforcement agency for protective custody services or other authorized actions taken pursuant to the Oklahoma Children's Code; and
3. 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 fees, expert witness fees, sheriff's fees, witness fees, transcripts and postage.

~~B. 1. After a judicial determination that the parent of the child is able to pay, in whole or in part, the costs and reimbursements specified by this section, the court shall order payment of the costs and reimbursements. The court may order such payments and reimbursements to be paid in installments and shall set the amount and due date of each installment.~~

Comment [OSCN2]: Addressed in section (A).

2. The court may order the terms and conditions of the payment of costs and expenses described in sub-section A of this section. When any parent is

financially able but has willfully failed to pay the costs and reimbursements as ordered by the court pursuant to this section, the parent may be held in indirect contempt of court and, upon conviction, shall be punished pursuant to Section 566 of Title 21 of the Oklahoma Statutes.

Comment [OSCN3]: This is not direct contempt and would require a purge.

~~3. Even though the court has previously found the parent indigent, if a parent is subsequently found to be financially able to pay costs and reimbursements, the court shall require payment of costs and reimbursements required by this section. The court may order such costs and reimbursements to be paid in installments.~~

Comment [DoHS4]: Deleted as unnecessary.

~~C. 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.~~

Comment [OSCN5]: Deleted as unnecessary; The law already sets forth remedy for nonpayment.

~~D. 1. The court may order reimbursements to be paid directly to the organization or institution having the care and custody of the child or children, or directly to the clerk of the court.~~

Comment [OSCN6]: It states above that money to be paid to DHS, law enforcement or court fund – a/k/a court clerk. Not sure court clerks want to be in the business of collecting costs for service agencies or DHS.

~~2. 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.~~

Comment [OSCN7]: Deleted because upfront anticipated costs are not a good idea.

~~E. 1. The Department may effectuate an order for payment of any costs and expenses authorized pursuant to this section against any asset of the parent. Any assignment, attachment, garnishment, or lien against such assets shall be served upon the person in possession of the assets or shall be recorded in the office of the county clerk in the county in which the parent resides or in which the asset is located.~~

~~2. Pursuant to the provisions of Section 236 of Title 56 of the Oklahoma Statutes, the Department may contract on a contingency fee basis with private attorneys for the collection and enforcement of orders for payment of costs and expenses against such assets. Any such third party payment shall be paid directly to the Department.~~

§10-7003-8.8. Deprived child – Paternity – Support.

A. 1. When paternity of an alleged or adjudicated deprived child is at issue has not been established, the court, within six (6) months after the filing of a deprived petition, shall either establish paternity or defer the issue of paternity establishment to the appropriate administrative or district court for any child for whom paternity has not been legally established according to Section 70 XXXX of this title.

2. When paternity is ~~an~~ at issue, an alleged father and mother of the child named in a deprived petition shall be given notice in the petition and summons that paternity may be established in a the deprived action. The Oklahoma Department of Human Services Child Support Enforcement Division shall proceed with paternity establishment for any case deferred to the administrative or other district court division under this subsection.

3. After the establishment of paternity, the court shall address ~~the issue of~~ current child support pursuant to subsection B of this section. In addition, the court may:

Comment [DoHS8]: Editor's clean-up.

a. order the father to pay child support for past months when no child support order was in effect according to the provisions of Section ~~83~~ XXXX of this title, or

b. reserve or refer the issue of prior support to the Oklahoma Department of Human Services Child Support Enforcement Division.

Comment [CO9]: Editor's Note: Need to insert the appropriate UPA section.

4. The order establishing paternity shall be filed as a separate document and shall not be confidential. The court clerk of the district court where the ~~child support~~ paternity order has been filed shall provide, upon request, a copy of the order establishing paternity to a representative of the Oklahoma Department of Human Services Child Support Enforcement Division. A court order for the release of the order establishing paternity or other information contained in the court record pertaining to paternity and child support shall not be required. The order may be captioned with a different case style in order to establish and enforce a child support order in an action other than the deprived proceeding.

Comment [OSCN10]: Clean-up (error in statute).

B. 1. Each parent of any child named in a deprived petition shall be given notice in the petition and summons that child support may be ordered or modified in the deprived action.

2. Within six (6) months after the filing of a deprived petition, the court shall ~~either~~ address the issue of child support or defer the issue of establishment or enforcement of child support to the appropriate administrative or district court. The Oklahoma Department of Human Services Child Support Enforcement Division shall proceed with the establishment or enforcement of child support orders for any case deferred to the administrative or other district court division under this subsection; provided, the Department's Child Support Enforcement Division shall enforce all child support orders entered by the court.

Comment [DoHS11]: CSED needs to enforce all the CS orders.

3. a. If there is an existing order for child support, the existing order shall remain in effect unless the court finds the existing order is not in the best interests of the child or children involved.

b. The court shall use the child support guidelines as provided for in Sections 118 and 119 of Title 43 of the Oklahoma Statutes in determining the amount each parent is to pay for care and maintenance of a child and issue an order describing the finding of the court.

c. The court may deviate from the child support guidelines when it is determined necessary in order for the parent to meet the obligations of a court-imposed ~~individual treatment and individualized~~ service plan or for other reasons as the court deems appropriate. If the court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action.

d. Each parent shall be individually ordered to pay his or her percentage of the total monthly child support obligation including parents who reside together.

e. The court shall order the parent to provide medical insurance whenever the parent has insurance available through employment or other group plan, regardless of whether insurance is available at the time the order is entered.

f. The child support order shall contain an immediate income assignment provision pursuant to Section 115 of Title 43 of the Oklahoma Statutes.

g. A child support computation form as provided for in Section 120 of Title 43 of the Oklahoma Statutes shall be completed by the court, counsel of record or may be referred to the Department's Child Support Enforcement Division for completion. Upon being signed by the judge and the computation form shall be incorporated as a part of the child support order.

Comment [DoHS12]: This language ensures that computation forms are done correctly by attorneys and not child welfare workers.

h. (1) A standard child support order form shall be used in the deprived action. The form shall be prescribed by the Oklahoma Department of Human Services Child Support Enforcement Division. ~~and~~ as shall be published by the Administrative Office of the Courts.

(2) The child support order shall be filed as a separate document and shall not be confidential.

(3) The court clerk of the district court where the child support order has been filed shall provide, upon request, a copy of the support order to a representative of the Oklahoma Department of Human Services Child Support Enforcement Division. A court order for the release of the child support order or other information contained in the court record pertaining to child support shall not be required.

(4) The order may be captioned with a different case style in order to enforce the child support order in an action other than the deprived proceeding.

i. The child support order may be modified upon a material change in circumstances.

j. The child support order may be enforced by any method allowed by law.

k. After a deprived action is dismissed, the most recent child support order entered in the deprived action shall remain in full force and effect, unless the judge presiding over the deprived action orders otherwise. If there was no prior administrative or district court case, the deprived action child support order shall be docketed and filed in a new district court family division action and enforced for current child support and arrearages. If the judge presiding over the deprived action modified a preexisting child support order or if there was an existing administrative or district court case, the child support order entered in the deprived action shall be filed in the existing case and enforced for current child support and arrearages. The child support order may be modified after being docketed in district court.

C. All child support payments shall be paid through the Oklahoma Centralized Support Registry as provided for in Section 413 of Title 43 of the Oklahoma Statutes.

D. When a child's placement custody is changed from one parent or caretaker to another pursuant to the Oklahoma Children's Code, the change in placement custody shall transfer child support payments to the new caretaker unless the

caretaker is receiving foster care payments or Temporary Assistance to Needy Families payments for the care of the child. Child support payments to the caretaker shall terminate when the child no longer resides with the caretaker.
E. The Department of Human Services shall promulgate rules necessary to implement the provisions of this section.

Comment [OSCN13]: Language clean-up because placement providers do NOT receive collected child support whereas custodians do.

§10-7003-5.1. Dispositional hearings – Additional reports or evidence.

A. After making an order of adjudication for a deprived child, the court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the deprived child, including but not limited to 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.

Comment [OSCN14]: Deletion - See next comment.

B. Before making an order of disposition, the court shall advise the district 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. The court shall provide parents, guardians, and legal custodians full and timely access to all reports that are considered by the court in any custody or visitation proceeding.

C. 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 Part 7 of this article, except where custody is placed with both parents.

D. On its own motion or that of the district 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 temporary custody of the child, or the child's release from temporary custody subject to supervision by the court, during the period of the continuance.

Comment [OSCN15]: Deletion due to this section being consolidated with §7003-5.5.

§10-7003-5.2. Examination of child by physician or other appropriate professional - Order for care - Expenses - Emergency - Investigation.

A. After a petition under the provisions of this part has been filed, the court may order the child to be examined and evaluated by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child. The court may order a mental behavioral health evaluation of a child as provided by the Inpatient Mental Health Treatment of Children Act and Substance Abuse Treatment of Minors Act.

Comment [CO16]: Clean-up.

B. 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

Comment [DoHS17]: This deleted language needs to be moved to the medical section.

~~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 county, 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.~~

C. After adjudication and at the request of a judge in any juvenile proceeding, the Department 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 another state, the Department may conduct a similar investigation.

Comment [DoHS18]: Need to decide whether to leave this subsection here or move to Article 7 Persons or Agencies Receiving Custody, or if this is even needed due to other amendments already made.

§10-7003-5.3. Individualized treatment and service plan.

~~A. An individual treatment and service~~ The Department or licensed child placing agency shall prepare and maintain a written individualized service plan for any child that has been adjudicated to be a deprived child plan shall be filed with the court within thirty (30) days after a child has been adjudicated to be deprived.

B. ~~The plan shall be filed~~ furnished to the court within 30 days after the adjudication of the child and shall be made available to counsel for the parties and any applicable Tribe by the Department of Human Services or the licensed child placing agency having custody of the child or responsible responsibility for the supervision of the case, or by the Department or the agency or licensed child-placing agency having custody of the child if the child has been removed from the custody of its lawful parent or parents.

Comment [DoHS19]: Language clean-up clarifying responsibility for the ISP.

C. ~~1. The treatment and individualized service plan shall be based upon a~~ comprehensive assessment and evaluation of the child and family and shall be developed with the participation of the parent, legal guardian, or legal custodian

Comment [DoHS20]: Clarification of those who need to be involved in developing the child's ISP.

of the child, the attorney for the child, the guardian ad litem for the child, if any, the child's tribe, and the child, if appropriate. The child's health and safety shall be the paramount concern in the development of the plan. The plan shall be:

~~1. 2. Developed with the participation or input of the parent, legal guardian, or custodian of the child, the attorney of the child and the guardian ad litem of the child, if any, and, if appropriate, the child. If any part of the plan is disputed or not approved by the court, an evidentiary hearing may be held and at its conclusion, the court shall determine the content of the individualized service plan in accord with the evidence presented and the best interests of the child.~~

Comment [DoHS21]: Clarification that the ISP is to be a part of dispo order& that court will conduct hearing if parties dispute the contents.

3. When approved by the court, each individualized service plan shall be incorporated and made a part of the court's dispositional order.

4. The plan shall be signed by the parent or parents or legal guardian of the child, the attorney for the parent or parents or legal guardian of the child, the child's attorney, the child's guardian ad litem, which may be a Court Appointed Special Advocate, a representative of the child's tribe, the child, if possible, and the Department or other responsible agency.

~~2. E D. 1. Every service plan prepared shall be individualized and specific to each child and the family of the child. The plan shall contain specific time frames.~~

Comment [OSCN22]: Will be placed elsewhere in this section

~~3. 2Written~~ The individualized service plan shall be written in simple and clear English. If English is not the principal language of the child's parent, legal guardian, or custodian, and such person is unable to read or comprehend the

Comment [DoHS23]: Language clean-up.

English language, to the extent possible the plan shall be written in such person's principal language;

~~4.3~~ The individualized service plan may be modified ~~Subject to modification~~

Comment [DoHS24]: Language clean-up.

based on changing circumstances consistent with the correction of the conditions that led to the adjudication of the child or other conditions inconsistent with the health, safety or welfare of the child; and

~~5.4~~ The individualized service plan must be measurable, realistic ~~Reasonable,~~

Comment [DoHS25]: Language clean-up.

~~accurate,~~ and ~~in compliance~~ consistent with the requirements of other court orders.

Comment [DoHS26]: Clean-up.

~~D E.~~ The ~~individual treatment and~~ individualized service plan shall include, but not be limited to:

~~1.~~ A history of the child and family, including identification of the ~~problems or conditions~~ leading to the deprived child adjudication and the changes the parent or parents must make in order for the child to safely remain in or return to the home. ~~The statement of the conditions leading to the adjudication shall include a statement of the methods to be used to correct those conditions or to achieve permanent placement of the child;~~

Comment [DoHS27]: Expanded language so parents' responsibilities will be specifically described.

~~2.~~ ~~Identification of the specific services to be provided to the child including, but not limited to, educational, vocational educational, medical, drug or alcohol abuse treatment, or counseling or other treatment services, and~~

Comment [DoHS28]: Clarifying that services to the parent & child will be separate.

Identification of the time-limited reunification services to be provided to the parent, legal guardian, or legal custodian, stepparent, other adult person living in the home or other family members, ~~to remediate or alleviate the conditions that~~

Comment [CO29]: Editor's Note: Services needed for the child are separated from those needed by others so it is less confusing and disjointed.

~~led to the adjudication, including services needed to assist the family to provide safe and proper care of the child or to prevent further harm to the child;~~

3. Identification of the specific services to be provided to the child including, but not limited to, educational, vocational educational, medical, drug or alcohol abuse treatment, or counseling or other treatment services.

Comment [DoHS30]: This is a lot of information required for the ISP, but intent is to ensure that this information is obtained for future planning.

Comment [CO31]: Editor's Note: This #3 on the child was in #2 above, & now a separate sub-section on services for the child.

a. The most recent available health and educational records of the child

shall be provided to the court upon the court's request, including:

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) a record of the child's immunizations;

(v) the child's known medical problems, including any known communicable diseases;

(vi) the child's medications; and,

(vii) any other relevant health and education information.

3 4. A schedule of the frequency of services ~~or treatment~~ and the means by which delivery of the services ~~or treatment~~ will be assured or, as necessary, the proposed means by which support services or other assistance will be provided to enable the parent or the child to obtain the services ~~or treatment~~;

Comment [DoHS32]: Language clean-up.

45. The name of the social worker assigned to the case;

6. A projected date for the completion of the individualized service plan;

Comment [OSCN33]: Taken from language below; relevant for supervision as well as custody cases.

7. Performance criteria that will measure the progress of the child and family toward completion of the individualized service plan including, but not limited to, time frames for achieving objectives and addressing the identified problems;

Comment [OSCN34]: Taken from language below. This is applicable to case plans for supervision as well as custody cases.

8. The name and business address of the attorney representing the child;

5. 9. If the child is placed outside the home, the individualized service plan must further provide:

Comment [OSCN35]: This is in addition to the above requirements.

a. The sequence and time frame for services to be provided to the parent, child, and if the child is placed in foster care, the foster parent, to facilitate the child's return home or to another permanent placement, during and after any such placement,

b. the reasons for such placement and a statement as to the unavailability or inappropriateness of local placement, or other good cause, for any placement which is not in as close proximity as possible to the home of the child,

A description of the child's placement and explanation about whether the placement is the least restrictive, most family-like setting available and in as close proximity as possible to the home of the parent or parents or legal guardian of the child when the case plan is reunification, and how the placement is consistent with the best interests and special needs of the child;

Comment [OSCN36]: The intent of this change is to require an affirmative attempt and statement as to why the selected placement is in the child's best interests.

c. the services to be provided to the child to ensure safe and proper care while in such placement and the projected date of discharge,

A description of any services or resources that were requested by the child, the child's parent or legal guardian since the date of the child's placement and

whether those services or resources were provided and if not, the basis for the denial of the services or resources;

Comment [OSCN37]: The intent of this change is a require that the ISP identify any needs presented by the child or parents or foster parents. Might prevent disruption in placement if addressed and insures that kids and foster parents are being contacted.

~~d. — the services necessary to assist the child to reintegrate with the child's family or other community-based placement and a description of acts by and conduct that is expected of the parent or parents, legal guardian, custodian, or stepparent or other adult person living in the home that would alleviate the conditions that resulted in the removal of the child before the child can be returned to a safe home,~~

d. Efforts to be made by the child's parent and the Department to enable the child to return to his or her home,

Comment [DoHS38]: Federal law requires that reunification efforts be addressed.

~~e. if the child is sixteen (16) years of age or older, the services necessary to make the transition from foster care or other community placement to independent living,~~

A description of the independent living plan for a child age sixteen (16) or older that includes how the following objectives will be met:

- (1) Education, vocational, or employment planning;
- (2) Health care planning and medical coverage;
- (3) Transportation including, where appropriate, assisting the child in obtaining a driver's license;
- (4) Money management;
- (5) Planning for housing;
- (6) Social and recreational skills; and

(7) Establishing and maintaining connections with the child's family and community.

Comment [OSCN39]: Family preservation being addressed.

~~f. a description of the type of safe and proper placement in which the child is to be placed,~~

Comment [OSCN40]: Already discussed above.

For a child in placement due solely or in part to the child's behavioral health or medical health issues, diagnostic and assessment information, specific services relating to meeting the applicable behavioral health and medical care needs of the child, and desired treatment outcomes; and,

~~g. a description of the initial support obligation to the child, as determined by the court,~~

Comment [OSCN41]: Unnecessary in a case plan.

A plan and schedule for regular and frequent visitation for the child and the child's parent or parents or legal guardian and siblings, unless the court has determined that visitation, even if supervised, would be harmful to the child.

Comment [OSCN42]: Detailed visitation with parent and siblings will be found in disposition section or thereabouts.

~~h. a description of any visitation rights and obligations of the parent or parents, legal guardian, or custodian during the period the child is in care,~~

~~i. a discussion of the safety and appropriateness of the child's placement, which placement is intended to be in the least restrictive and most family-like setting available, consistent with the best interests and special needs of the child and in as close proximity as possible to the child's home;~~

Comment [OSCN43]: Already discussed above.

~~6. Performance criteria that will measure the progress of the child and family toward completion of the treatment and service plan including, but not limited to, time frames for achieving objectives and addressing the identified problems;
7. A projected date for the completion of the treatment and service plan;~~

~~8. The name and business address of the attorney representing the child;~~

Comment [OSCN44]: Moved to general requirements for case plans.

9. 10. The permanency plan for the child, and the reason for selection of that goal plan and a description of the steps being taken by the Department to finalize

the plan. If the permanency plan is adoption or legal guardianship, the Department must describe, at a minimum, child-specific recruitment efforts such as relative searches conducted and the use of state, regional, and national adoption exchanges to facilitate the orderly and timely placement of the child, whether in or outside of the state. A copy of this documentation shall be provided to the court in the review required under Section *****.

~~a. In the case of a child with respect to whom the permanency plan is adoption or placement in other permanent placement, documentation of the steps the Department is taking to:~~
~~(1) find an adoptive family or other permanent living arrangement for the child,~~
~~(2) place the child with an adoptive family, a fit and willing kinship relation, a legal guardian, kinship guardian, or in another planned permanent living arrangement, and~~
~~(3) finalize the adoption or guardianship, kinship guardianship or other permanent placement.~~
b. Such documentation shall include, at a minimum, child-specific recruitment efforts such as the use of state, regional and national adoption exchanges, including electronic exchange systems.

Comment [DoHS45]: The deleted language below is incorporated into the underscored language above.

~~E~~ F. Each ~~treatment~~ individualized service plan shall specifically provide for the safety of the child, in accordance with state and federal law, and clearly define what actions or precautions will, or may, be necessary to provide for the safety and protection of the child.

~~F~~ G. The ~~individual treatment and~~ individualized service plan shall include the following statement:

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

Comment [DoHS46]: This language added to emphasize the need for parents to attend hearings regarding their children.

~~G H.~~ Whenever a child who is subject to the provisions of this section is committed for inpatient ~~mental~~ behavioral health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the ~~individual treatment and~~ individualized service plan shall be amended as necessary and appropriate, including, but not limited to, identification of the treatment and services to be provided to the child and the child's family upon discharge of the child from inpatient ~~mental~~ behavioral health or substance abuse treatment.

Comment [CO47]: Clean up.

~~H.~~ In addition to the information required pursuant to subsection A of this section, when a child, who at birth tested positive for alcohol or a controlled dangerous substance and who was determined to be at risk for future exposure to such substances, has been removed from the home, the Department of Human Services, subject to court approval:

Comment [DoHS48]: This subsection is stricken. Such services, if needed, will be part of the ISP referenced above.

~~1.~~ May require, as part of the treatment and service plan, that the mother of such child complete a treatment program approved by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority prior to the return of the child to a safe home;

~~2.~~ May require, as part of the treatment and service plan, that the father of the child, legal guardian, custodian, stepparent or other adult person living in the home who is an alcohol dependent or a drug dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, and whose conduct has contributed to the dependency of such child or mother on alcohol or drugs, or to the conditions which caused the child to be adjudicated deprived, complete a treatment program approved by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority prior to the return of the child to the safe home; and

~~3.~~ May require testing for substance abuse of the mother, father, legal guardian, 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 a safe home. A positive test of any such person shall be presented to the Department of Human Services and the district attorney.

~~I.~~ Testing ordered by the court pursuant to subsection H of this section shall be admissible only for the purposes of deprived child and custody proceedings.

Comment [OSCN49]: Unnecessary to specifically set for requirements of case plan. Unless Feds have specific requirements.

~~J.~~ The services delineated in the individual treatment and service plan shall be designed to improve the conditions in the family home and aid in maintaining the child in a safe home, to facilitate the return of the child to the family home, or to facilitate the permanent placement of the child. The plan shall focus on clearly defined objectives and shall provide the most efficient path to quick reunification or permanent placement. To the extent possible, the plan shall contain outcome-

~~based evaluation criteria that measure success in the reunification or permanent placement process.~~

~~K. In the event that the parent or parents are unwilling to participate in the development or implementation of the individual treatment and service plan, the Department shall document such unwillingness in writing to the parent or parents and shall file the document with the court.~~

Comment [OSCN50]: This is redundant & is being deleted

~~L. The parents, any foster parents of the child, the child's attorney and the guardian ad litem of the child, if any, shall be each provided a copy of the treatment and service plan approved by the court.~~

Comment [OSCN51]: Language deleted because this is never done & the parent's unwillingness to participate in the ISP should be reported to the court in a court report.

Comment [OSCN52]: Previously addressed.

§10-7003-8.1. Religious faith of parents or child - Permanency planning - Placement with foster parent or other person in home convicted of felony.

A. In placing a child in the custody of an individual, ~~or in the custody of a private agency or institution~~, the court shall, and the Department of Human Services 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.~~

B. Except as otherwise provided by this section or by law, it shall be left to the discretion of the judge to place the custody of children where their total needs will best be served.

~~C. If the child is removed from the custody of the child's parent, the court or the Department of Human Services, as applicable, shall immediately consider concurrent permanency planning, so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child.~~

Comment [DoHS53]: This subsection concerning "concurrent permanency planning" is deleted because it is repeated in §7003-5.5(B) & is modified there consistent with current federal guidelines.

D. A prospective foster or adoptive parent shall not be an approved placement for a child if the prospective foster or adoptive parent or any other person residing in the home of the prospective foster or adoptive parent has been convicted of any of the following felony offenses:

1. Within the five-year period preceding the application date, a physical assault, battery or a drug-related offense;
2. Child abuse or neglect;
3. Domestic abuse;
4. A crime against a child, including, but not limited to, child pornography; and
5. A crime involving violence, including, but not limited to, rape, sexual assault or homicide, but excluding those crimes specified in paragraph 1 of this subsection.

E. 1. Under no circumstances shall a child be placed with or in the custody of an individual subject to the Oklahoma Sex Offenders Registration Act or an

individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act.

2. In addition, prior to the court placing a child in the custody of an individual, the court shall inquire as to whether the individual has been previously convicted of any ~~other~~ felony or a ~~relevant~~ misdemeanor or has any felony or ~~relevant~~ misdemeanor charges pending.

3. Prior to the custody order being entered, the individual seeking custody shall ~~respond by certified affidavit or through sworn testimony to the court and shall~~ provide an Oklahoma criminal history record obtained pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes to the court.

4. For purposes of this subsection the term ~~terms~~:

a. ~~“relevant misdemeanor” may include, but shall not be limited to, assault and battery, alcohol or drug-related offenses, crimes involving domestic abuse domestic violence and or other offenses deemed relevant by the court involving the use of physical force or violence against the person or property of another, and~~

Comment [DoHS54]: Clean up to provide extra guidance on “relevant misdemeanor.”

b. “individual” shall not include a parent or, legal guardian, ~~or custodian~~ of the child.

F. The provisions of this section shall not apply in any paternity or domestic relations case, unless otherwise ordered by the court.

§7003-5.5(A)(B) STAND ALONE SECTION – ~~Disposition Orders Permissible Dispositional Hearings~~

A. 1. When a child has been adjudicated deprived pursuant to the provisions of Section 7003-4.5 ____ of this title, ~~the court a dispositional hearing may enter a dispositional order be held on the same day as the adjudication hearing, but in any event the court shall hold a dispositional hearing and enter such order the hearing shall be held and an order entered no later than forty (40) calendar days thereafter of such adjudication unless the court finds on the record that the best interests of the child will be served by granting a delay. The dispositional hearing shall not be delayed absent a showing of good cause and a finding by the court that the best interests of the child will be served by granting the delay. The court shall set forth the reasons why a delay is necessary and shall schedule the hearing at the earliest possible time following the delay.~~

Comment [OSCN55]: Consolidated into one paragraph that discusses time frames for hearing.

~~2. If the court grants a delay, the court shall state why the delay is necessary and shall state the minimum amount of time needed to resolve any such reasons for the delay. The court shall schedule the dispositional hearing at the earliest possible time following the delay.~~

Comment [OSCN56]: Moved to above section

2. During the hearing all evidence, including oral and written reports, relevant to the determination of the disposition best serving the health, safety and welfare of the child may be received by the court and may be relied upon to the extent of its

probative value even though not otherwise competent in the hearing on the petition. The parties shall be afforded a reasonable opportunity to examine the written reports prepared for the court's consideration prior to the dispositional hearing and to controvert them. The hearing may be informal and hearsay may be relied upon.

Comment [OSCN57]: Reduction of §7003-5.1 and language provided by Penn.

3. Any order concerning child support, visitation or the legal custody of the child entered in any other administrative or district court proceeding shall be subject to modification by the juvenile court during the pendency of the deprived action.

Comment [CO58]: This text covers prior orders and orders that may be entered during the pendency of the deprived proceedings without consent of the deprived court judge.

4. The court shall determine and order the individualized service plan for the parties.

5. At the conclusion of the dispositional hearing, the court shall schedule the dates and times for periodic review and permanency hearings.

Comment [OSCN59]: This is recommended as good practice because it announces with specificity how much time the NPs have to correct the conditions.

B. If the child is removed from the custody of the child's parent, the court or the Department of Human Services, as applicable, shall immediately consider concurrent permanency planning, and, when appropriate, develop a concurrent plan so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child.

Comment [CO60]: Current federal guidelines do not require concurrent planning in all cases when reunification is the permanency goal; do cc planning only when appropriate, such as when NPs aren't working ISP.

1. The court shall also:

- a. establish an initial permanency plan for the child; and
- b. determine if aggravated circumstances exist pursuant to Section XXXXX of this title and whether reunification services are appropriate for the child and the child's family.

2. When reunification with a parent or legal guardian is the permanency plan and concurrent planning is indicated, the court shall determine if efforts are being made to place the child in accord with the concurrent permanency plan, including whether appropriate in-state and out-of-state permanency placement options have been identified and pursued.

3. Every effort shall be made to place the child with a suitable relative of the child.

§7003-5.5(C)(D)(E)(F) STAND ALONE SECTION - Disposition Orders Permissible

Comment [DoHS61]: We decided to break up this very long statute into separate sections.

C.A The following kinds of dispositional orders may be made in respect to wards of the court pursuant to a deprived child proceeding and shall be in accordance with the best interests of the child:

1. a. The court may place the child under protective supervision by the Department of Human Services in the child's own home with the parent or legal guardian with whom the child was residing at the time the events or conditions arose that brought the child within the jurisdiction of the court, or in the custody of a suitable person elsewhere subject to such conditions as the court may prescribe that would reasonably prevent the child from continuing to be deprived. If a child has been removed from the custodial parent of the child and the court, in the best interests of the child, is unable to release the child to the custodial parent, the court shall give priority for placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests. If the court cannot place the child with the noncustodial parent, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be documented in the court record. The court may require the parent or other person to comply with such conditions as the court may require and to give security by bond, with surety or sureties approved by the court, for compliance with such order.

Comment [CO62]: This part deleted because a new placement preference section is being drafted.

b The court may place the child with the non-custodial parent, if available, upon completion of a home assessment, unless the court finds that such placement would not be in the best interest of the child. Any party with knowledge of the facts may present evidence to the court regarding whether the placement is in the best interest of the child. If the court places the child with such parent, it may do either of the following:

Comment [OSCN63]: Custody with noncustodial, non-perp parent. May conduct hearing whether this is in child's best interest.

(1). Order that the non-custodial parent assume sole custodial responsibilities for the child. The court may also order reasonable visitation and the payment of child support by the child's other parent. The court may then terminate its jurisdiction by entering a final permanency order.

Comment [OSCN64]: Exit orders

(a) The final order entered determining custody, visitation and child support from the deprived action shall remain in full force and effect and shall control over any custody or child support order entered in an administrative or district court action initiated prior to or during the pendency of the deprived action until such time it is modified by a subsequent order of the district court.

(b) The final order entered determining custody, visitation and child support from the deprived action may be docketed and filed in the prior existing or pending administrative or district court action; provided, however, if there is no administrative or district court action then in existence, the surviving order may be used as the sole basis for opening a new administrative or district court action in the same county where the deprived action was pending or in the county where the legal custodian of the child resides. When applicable, the clerk of the juvenile court shall transmit the surviving order to the clerk of the district court of the county where the order is to be filed along with the names and last-known addresses of the parents of the child. The clerk of the district court shall immediately upon receipt open a file without a filing fee, assign a new case number and, when applicable, file the order and send by first-class mail a copy of the order with the new or prior existing case number back to the juvenile court and to the parents of the child at their last-known address. The order shall not be confidential and may be enforced or modified after being docketed and filed in the prior existing or new administrative or district court action.

Comment [OSCN65]: Moved exit order procedure from end of this section.

(2) Order that the non-custodial parent assume custody of the child under protective supervision by the Department. The court may order that:

(a) reunification services be provided to the parent or legal guardian from whom the child has been or is being removed;

(b) services be provided solely to the parent who is assuming physical custody of the child in order to allow that parent to later obtain legal custody without court supervision; or

(c) services be provided to both parents, in which case the court shall determine, at a subsequent review hearing, which parent, if either, shall have custody of the child.

Comment [OSCN66]: Place child with non-custodial non-perp, but go ahead and order tx plan for custodial parent, or for both parents until can determine who should get custody, if either.

c. If the court orders the child into the home of a father whose paternity has not been established, the alleged father must cooperate in establishing paternity as a condition for the child's continued placement in the alleged father's home.

~~b. If it is consistent with the welfare of the child, the child shall be returned to the child's parent, legal guardian or custodian. Provided, that if it appears to the court that the conduct of the parent, legal guardian, custodian, or that a stepparent or other adult person living in the home has contributed to such deprivation, the court may issue a written order specifying conduct to be followed by such parent, legal guardian, 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 or continuing to be deprived.~~

Comment [CO67]: Editor's Note: This language is deleted because it is covered in the text above & below.

d. If the court issues an order for protective supervision of the child in the home of a parent, the court may order the following:

Comment [OSCN68]: Provide for protective-type orders.

(1) that a party or other person living in the home vacate the child's home indefinitely or for a specified period of time within forty-eight (48) hours of issuing the order.

Comment [DoHS69]: Might be a problem teenager or other person in the home.

(2) that a party, a parent or a legal guardian of the child prevent a particular person from having contact with the child;

e. At any time during the deprived child proceedings the court may issue an order specifying the conduct to be followed by any person living in the home that the court determines would be in the best interests of the child. The conduct specified shall be such as would reasonably prevent the child from continuing to be deprived.

e.f. The order placing the child under supervision by the Department in the child's own home shall remain in effect for a period of one (1) year, ~~to be specified by the court, and the order may be extended or renewed by the court.~~ In appropriate circumstances, the court may extend or reduce the period of supervision by the Department.

Comment [OSCN70]: Unnecessary

Comment [DoHS71]: The court needs maximum discretion to deal with situations that may call for less supervision time.

2. a. ~~The~~ If the court is unable to place the child in the home of a parent, the court ~~may place~~ shall give a preference for placing temporary custody of the child with a relative as specified in Section XXXXX of this title, subject to the best interests of the child and the conditions and restrictions specified in Section ~~§7003-8.1~~ XXXXX of this title. In determining whether to place temporary custody of the child with a relative the court may consider the following factors:

Comment [C072]: References is to the new relative placement section in Article 4 Part 2.

Comment [C073]: Editor's Note: Reference is to the current §7003-8.1

- (1) the physical, psychological, educational, medical, and emotional needs of the child.
- (2) the wishes of the parent, the relative and child, if appropriate.
- (3) whether placement of the siblings and half siblings can be made in the same home, if that placement is found to be in the best interest of each child;
- (4) the background information of the relative and any other person living in the home, including whether any such person has a prior history of violence, acts of child abuse or neglect; or any other background that would render the home unsuitable;
- (5) the nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide long term permanency for, the child if reunification is unsuccessful;

(6) the ability of the relative to do the following:

- i. provide a safe, secure and stable environment for the child;
- ii. exercise proper and effective care and control of the child;
- iii. provide a home and the necessities of life for the child;
- iv. protect the child from his or her parents;
- v. facilitate court-ordered reunification efforts with the parent;
- vi. facilitate visitation with the child's siblings and other relatives;
- vii. arrange for appropriate and safe child care, if necessary.

b. If more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be evaluated under the factors enumerated in this subdivision. However, whenever a new temporary custody order regarding the child must be entered, consideration shall again be given as described in this section to relatives who have been found to be suitable and who will fulfill the child's permanency needs.

c. If the court does not place temporary custody of the child with a relative pursuant to this subsection, the court shall state for the record the reasons placement with that relative was denied.

Comment [OSCN74]: This sets up relative preference for temporary custody. If acceptable by committee, then need to have this provision applicable to DHS placements.

3. The court may place the child in the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In placing a child in a private institution or agency, the court shall select one that is licensed by the Department 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 place a child in 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.

~~4. The court may order the child to receive counseling or other community-based services as necessary.~~

Comment [OSCN75]: Moved to section above.

5. 4. The court may place the child in the custody of the Department.

a. In selecting a placement for a child in its custody, the Department shall make an individualized determination based upon the child's best interests and permanency plan regarding the following placement options:

1. a home or facility that meets the preferences specified by the State and Federal Indian Child Welfare Act when applicable.

Comment [DoHS76]: Editor's Note: This was moved this up here as the 1st factor since ICWA is federal & trumps state.

(2) the home of a noncustodial parent;

(3) the home of a relative approved by the Department;

(4) the home of a non-relative kinship family approved by the Department;

(5) a an approved foster home in which the child has been previously placed;

(6) a suitable non-kinship foster family approved by the Department;

(7) a suitable licensed group home for children;

b. Unless the child is placed with relatives or in accord with the Federal and State Indian Child Welfare Acts, the child shall be placed, when possible, in the county of residence of the child's parent or legal guardian in order to facilitate reunification of the family. If an appropriate placement is not available in the parent's or legal guardian's county of residence, the child shall be placed in an appropriate home in the nearest proximity to resident county of the parent or legal guardian.

(1). Nothing in this section shall be construed to mean that the child's placements shall correspond in frequency to changes of residence by the parent or legal guardian. In determining whether the child should be moved, the Department shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or legal guardian's reason for the move.

c. If the child is part of a sibling group, it shall be presumed that placement of the entire sibling group in the same placement is in the best interests of the child and siblings unless the presumption is rebutted by a preponderance of the evidence to the contrary.

Comment [OSCN77]: Presumption that siblings separation is NOT in child's best interests.

~~5. 6. If the child has been placed outside the home, and it appears to the court that the parent, legal guardian, custodian, stepparent, or other adult person living in the home has contributed to the deprivation of the child, the court may order that the parent, legal guardian, 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.~~

The court may order the Department to coordinate the provision of services provided by other agencies in order that the court-approved permanency plan may be achieved.

Comment [OSCN78]: Probably unnecessary, but sets out reasonable services to be provided by dhs or other outside agencies – by order of court, if necessary, for either or both child and parent

6. 1. If the court determines that reunification services are appropriate for the child and a parent, the court shall allow reasonable visitation with the parent or legal guardian from whose custody the child was removed, unless visitation is not in the best interest of the child, taking into consideration:

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

2. A court may not deny visitation based solely on a parent's failure to prove that the parent has not used legal or illegal substances or complied with an aspect of the court ordered individualized service plan.

7. a. The court may order a permanent guardianship to be established as more fully set forth in Section XXXX of this Code.

Comment [OSCN79]: Moved to separate statutory section that deals with guardianships with and without consent of parents.

~~order a child's permanent care and custody transferred to another person, subject to residual parental rights and responsibilities and subject to such orders of the court as deemed necessary for the health, safety or welfare of the child pursuant to the provisions of this paragraph, upon the written consent of both parents of the child or upon the consent of one parent only if:~~

- ~~(1) the other parent is deceased,~~
- ~~(2) the other parent has been determined by a court of law to be incompetent or incapacitated,~~
- ~~(3) the other parent's whereabouts or identity is unknown. This fact shall be attested to by an affidavit of the consenting parent,~~
- ~~(4) the other parent who is eighteen (18) years of age or older, has signed a statement consenting to the transfer, executed before a notary public,~~
- ~~(5) the parental rights of the other parent has been terminated,~~

~~(6) the other parent has been or is found by the court of law to be unfit or unable to exercise parental rights and responsibilities for the child based upon situations enumerated in Section 7006-1.1 of this title,~~

~~(7) is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or~~

~~(8) has abandoned the child or is determined by the court to be otherwise unfit to assume custody of the child for any other reason.~~

~~b. Prior to the entry of an order transferring the permanent care and custody of a child, the court shall receive an investigation and report regarding the background and home of the prospective custodian. Such investigation and report of the prospective custodian shall be made pursuant to the requirements of the Oklahoma Adoption Code. The Department of Human Services shall only be required by the court to make the home study and report as specified by this paragraph in the following circumstances:~~

~~(1) the Department has previously conducted a home study on the prospective custodian within the past three (3) years, or~~

~~(2) the child is in the custody or under the legal supervision of the Department.~~

~~e. Upon the entry of an order providing for the transfer of the permanent care and custody of a child, the order shall remain in full force and effect until:~~

~~(1) the child reaches the age of eighteen (18) years,~~

~~(2) the child marries or is legally emancipated, or~~

~~(3) the parent who consented to the transfer of the permanent care and custody of the child petitions the court for the recovery of the child and the court finds after evidentiary hearing:~~

~~(a) the child has been abused or neglected while in the care and custody of the custodian, and~~

~~(b) it is in the best interests of the child that custody of the child be returned to the parents,~~

~~(4) the district attorney, attorney for the child, or custodian petitions the court for modification of the order transferring permanent care and custody and the court finds after evidentiary hearing that it is in the best interests of the child for the order to be modified and the custody of the child be given to another person, pursuant to the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Children's Code,~~

~~(5) the order terminates because of the death or incapacity of the custodian or the death of the child, or~~

~~(6) the child is adopted.~~

~~d. An order providing for the transfer of the permanent care and custody of a child:~~

~~(1) shall require that the placement be reviewed within one (1) year after transfer and may require the person to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review. Such order shall not require the Department to supervise the placement during such period,~~

~~(2) shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, and~~

~~(3) unless periodic reviews are required pursuant to this subparagraph, the court may close the case, provided the order transferring the permanent care and custody of the child shall remain in full force and effect subject to the provisions of subparagraph b of this paragraph.~~

~~8. a. When reunification of the family is not recommended or possible, as determined by the court, the court may order a child's permanent care and custody transferred to a kinship guardian subject to residual parental rights and responsibilities and subject to such orders of the court as deemed necessary for the health, safety or welfare of the child. Kinship guardianship shall include, but not be limited to, the following parental responsibilities with respect to a child:~~

~~(1) protection,~~

~~(2) education,~~

~~(3) care and control,~~

~~(4) custody, and~~

~~(5) decision-making.~~

~~b. A kinship foster parent may file a petition with the court to be appointed as kinship guardian for a child.~~

~~c. The petition for kinship guardianship shall allege that:~~

~~(1) the child is in the legal custody of the Department,~~

~~(2) more than twelve (12) months have passed since the date of the dispositional order placing such child in the legal custody of the Department,~~

~~(3) the parents of the child are presently and for the foreseeable future unable to provide proper and adequate care for the child,~~

~~(4) the prospective kinship guardian consents to the appointment,~~

~~(5) the child has resided with the kinship foster parent and there exists a loving and emotional tie between the child and the kinship foster parent, and~~

~~(6) it would be in the best interests of the child for the petition to be granted.~~

~~d. Notice of the petition and a copy of the petition shall be served upon the parties, the Department, and the guardian ad litem of the child, if any.~~

~~e. Prior to the entry of an order appointing a kinship guardian, the court shall receive the most recent report regarding the background and home of the prospective kinship guardian.~~

~~f. If the court finds that the elements of the petition have been proven based on clear and convincing evidence, or upon the consent of all parties, the court shall grant the petition.~~

~~g. An order appointing a person as a kinship guardian shall award custody of the child to the kinship guardian. A kinship guardian shall have the same authority as a parent to consent on behalf of a child, except that a kinship guardian shall not consent to the adoption or surrender of a child.~~

~~h. Upon the entry of an order providing for the transfer of the permanent care and custody of a child to a kinship guardian, the order shall remain in full force and effect until:~~

~~(1) the child reaches the age of eighteen (18) years,~~

~~(2) the child is married or legally emancipated,~~

~~(3) the court finds after evidentiary hearing:~~

~~(a) the child has been abused or neglected while in the care and custody of the kinship guardian, and~~

~~(b) it is in the best interests of the child that custody of the child be returned to the parents,~~

~~(4) the district attorney, an attorney for the child, or the kinship guardian petitions the court for modification of the order transferring permanent care and custody to a kinship guardian and the court finds after evidentiary hearing that it is in the best interests of the child for the order to be modified and the custody of the child be given to another person, pursuant to the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Children's Code,~~

~~(5) the order terminates because of the death or incapacity of the kinship guardian or the death of the child, or~~

~~(6) the child is adopted.~~

~~i. An order appointing a kinship guardian shall:~~

~~(1) require that the placement be reviewed within one (1) year after transfer and may require the kinship guardian to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review. Such order shall not require the Department to supervise the placement during such period,~~

~~(2) not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, unless periodic reviews are otherwise required by the court, and~~

~~(3) unless periodic reviews are required, the court may close the case, provided the order transferring permanent care and custody to a kinship guardian shall remain in full force and effect subject to the provisions of this subparagraph.~~

~~j. Except as otherwise provided by the court, the appointment of a kinship guardian shall not affect or impair the visitation rights of a parent.~~

~~9. 8. Except as otherwise provided by law, the court may dismiss the petition and terminate its jurisdiction at any time for good cause shown when doing so is in the best interests of the child.~~

~~D. Any order entered pursuant to this section shall include a statement informing the child's parent that the consequences of noncompliance with the requirement of the court may include termination of the parent's rights with respect to the child or shall include a statement informing the child's legal guardian or custodian that the consequences of noncompliance with the requirement of the court may include removal of the child from the custody of the legal guardian or custodian.~~

~~E. 1. Except as otherwise provided in subsection F of this section, in In any dispositional order removing a child from the home of the child, the court shall~~

make a determination as to whether, in accordance with the best interests and the health, safety or welfare of the child:

~~a. reasonable efforts have been made to provide for the safe return of the child to the child's own home, or~~

~~b. reasonable efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.~~

~~2. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health, safety or welfare shall be the paramount concern.~~

Comment [OSCN80]: Placed in above paragraph.

~~2. a. If reasonable efforts are required for the safe return of the child to the child's home, the court shall allow the parent of the child not less than three (3) months to correct the conditions which led to the adjudication of the child as a deprived child, however the time period for reunification services may not exceed seventeen (17) months from the date that the child as initially removed from the child's home, absent a finding of compelling reasons to the contrary.~~

Comment [DoHS81]: 15 + initial 60 days

~~F. 1. At any hearing held pursuant to the provisions of this section, if~~

~~b. If the court finds that continuation of reasonable efforts to return the child home are inconsistent with the permanency plan for a child, the court shall determine whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.~~

~~2. c. Reasonable efforts to reunite the child with the child's family shall not be required however, pursuant to the provisions of Section 7003-4.6 XXXXX of this title.~~

~~3. In any dispositional order involving a child sixteen (16) years of age or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from out-of-home care to independent living.~~

Comment [OSCN82]: Moved up from subsection H

§7003-5.5(G) STAND ALONE SECTION: EDUCATIONAL NEGLECT

~~G.A. 1. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the local school district, the county, the Department or a private individual or entity.~~

Comment [DoHS83]: Editor's Note: We decided to make this section dealing with educational neglect a stand alone section.

2. Prior to final disposition, the court shall require ~~that it be shown~~ verification by the appropriate school district that a the child found to be truant has been evaluated for literacy, learning disabilities, ~~mental retardation~~ developmental disabilities, and hearing and visual impairments and other impediments which could constitute an educational handicap. The results of such ~~tests~~ assessments or evaluations shall be made available to the court for use by the court in determining the disposition of the case.

Comment [OSCN84]: Clean up

3. No child who has been adjudicated deprived upon the basis of 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, legal guardian or custodian of the child.

4. A deprived adjudication based solely upon repeated absence from school shall not constitute a ground for termination of parental rights.

~~H. In any dispositional order involving a child sixteen (16) years of age or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from out-of-home care to independent living.~~

Comment [OSCN85]: Moved up

~~I. 1. If reasonable efforts are required for the return of the child to the child's home, the court shall allow the parent of the child not less than three (3) months to correct conditions which led to the adjudication of the child as a deprived child prior to terminating the parental rights of the parent pursuant to the provisions of Section 7006-1.1 of this title.~~

Comment [OSCN86]: Moved up

~~2. The court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated.~~

Comment [OSCN87]: Place with termination statutes-

~~3. If the court terminates the rights of a parent and places the child with 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 places the child with the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning such child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate upon final decree of adoption.~~

Comment [CO88]: Incorporated into TPR Article.

~~J. 1. When the juvenile court assumes jurisdiction over a child pursuant to Article III of this Code, an order concerning child support or the legal custody of the child that has been previously entered in any other administrative or district court proceeding shall be subject to modification by the juvenile court during the pendency of the deprived action. When the juvenile court terminates its jurisdiction over the child in the deprived action, the most recent order which determines child support or awards legal custody of the child to a parent or other~~

Comment [DoHS89]: Editor's Note: Exit order language has been moved up to sections dealing with parental reunification.

~~person shall remain in full force and effect and shall control over any prior custody or child support order entered in an administrative or district court action.~~

~~2. The surviving custody or child support order from the deprived action may be docketed and filed in the prior existing or pending administrative or district court action; provided, however, if there is no administrative or district court action then in existence, the surviving order may be used as the sole basis for opening a new administrative or district court action in the same county where the deprived action was pending or in the county where the legal custodian of the child resides. When applicable, the clerk of the juvenile court shall transmit the surviving order to the clerk of the district court of the county where the order is to be filed along with the names and last known addresses of the parents of the child. The clerk of the district court shall immediately upon receipt open a file without a filing fee, assign a new case number and, when applicable, file the order and send by first class mail a copy of the order with the new or prior existing case number back to the juvenile court and to the parents of the child at their last known address. The order shall not be confidential and may be enforced or modified after being docketed and filed in the prior existing or new administrative or district court action.~~

Comment [OSCN90]: I moved these subsections to previous subsections.

NEW SECTION - PERMANENT GUARDIANSHIPS

Comment [OSCN91]: Can also be renamed as long-term custody.

A. The court may establish a permanent guardianship between a child and a relative or other adult if the guardianship is in the child's best interests and all of the following conditions are substantially satisfied:

1. The child has been adjudicated to be a deprived child;
2. The parent has:
 - a. consented to the guardianship;
 - b. had his or her parental rights terminated;
 - c. failed to substantially correct the conditions that led to the adjudication of the child;
 - d. been adjudicated as incompetent or incapacitated by a court;
 - e. abandoned the child;
 - f. failed to be identified or has not been located despite reasonably diligent efforts to ascertain the whereabouts of the parent; or,
 - g. died.
3. The child consents to the guardianship if the court finds the child to be of sufficient intelligence, understanding, and experience to provide consent.
4. Termination of the parent's rights is either not legally possible or not in the child's best interests or adoption is not the permanency plan for the child.
5. The child and the prospective guardian do not require protective supervision or preventive services to ensure the stability of the guardianship.

6. The prospective guardian is committed to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
7. The prospective guardian agrees to not return the child to the care of the person from whom the child was removed nor to allow visitation without the approval of the court.
8. The child has been residing or placed with the proposed guardian for at least the six (6) preceding months or the permanent guardian is a relative with whom the child has a relationship.

Comment [OSCN92]: Currently, Oklahoma law requires 12 months from date of disposition.

Comment [OSCN93]: Allows for relative within whom the child may have previously resided with or has a close relationship with.

B. In proceedings for permanent guardianship, the court shall give primary consideration to the physical and behavioral health needs of the child.

C. Unless otherwise set forth in the final order of permanent guardianship, a permanent guardian is vested with all of the rights and responsibilities as set forth in Title 30 of the Oklahoma Statutes relating to the powers and duties of a guardian of a minor, other than those rights and responsibilities retained by the child's parent, if any, that are set forth in the decree of permanent guardianship.

Comment [OSCN94]: Whatever the title and chapter and section is in guardianship statute.

NEW SECTION – PROCEDURE FOR GUARDIANSHIP

A. The State or child's attorney shall file a motion for permanent guardianship with the juvenile court in the deprived case. The motion shall be verified by the prospective guardian and shall include the following:

1. The name, gender and date of birth of the child.
2. The facts and circumstances supporting the grounds for permanent guardianship.
3. The name and address of the prospective guardian and a statement that the prospective guardian agrees to accept the duties and responsibilities of guardianship.
4. The relationship of the child to the prospective guardian.
5. That the prospective guardian understands that the guardianship is intended to be permanent in nature and that the person will be responsible as the guardian until the child reaches the age of majority.
6. Whether the child has resided with the prospective guardian prior to the motion being filed, for what length of time and under what circumstances.
7. Whether there exists a loving emotional tie between the child and the prospective guardian.

B. Notice of the hearing as well as a copy of the motion shall be served upon the parties, the Department and the guardian *ad litem* of the child, if any. Notice shall also be sent to the tribe of an Indian child as defined by the federal Indian Child Welfare Act. Service shall not be required on the parent whose rights have previously been terminated.

Comment [OSCN95]: Reworded to make more sense.

C. When the child is in the custody of the Department, the Department shall cause an assessment of the proposed guardian's home to be completed and provide a report to the court regarding the suitability of the proposed guardian and whether guardianship is in the child's best interest. The Department shall promulgate rules in furtherance of the duties imposed by this subsection. However, the prospective guardian shall be responsible to obtain the home assessment if the child is not in the custody of the Department.

Comment [OSCN96]: Simplified the homestudy and left it to DHS to set up appropriate rules re: investigation. However, subcommittee may want to adopt same requirements for homestudy as with adoptions. After all, both are intended to be permanent.

1. The findings of the home assessment shall be set forth in a written report provided to the court, the State, the child and Guardian *ad litem*, if any, before the hearing. The court may require additional information as necessary to make an appropriate decision regarding the permanent guardianship.

D. 1. Before issuing an order or permanent guardianship, the court shall find by clear and convincing evidence all of the following:

- a. The factual basis for establishing parental unfitness or unavailability to provide adequate care for the child.
- b. Termination of the parent's rights is either not legally possible or not in the child's best interests or adoption is not the permanency plan for the child.
- c. The child has resided with the permanent guardian for a least six (6) months; or the permanent guardian is a relative with whom the child has a relationship.
- d. A permanent guardianship is in the best interests of the child.
- e. The proposed permanent guardian:
 - i. is emotionally, mentally, physically and financially suitable to become the permanent guardian; and
 - ii. has expressly committed to remain the permanent guardian for the duration of the child's minority; and
 - iii. has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian.

Comment [OSCN97]: Added specific findings of fact.

2. An order of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights.

E. Upon finding that grounds exist for a permanent guardianship, the court may also order visitation with the parent, siblings or other relatives of the child if such contact would be in the child's best interests as well as any other provision necessary to provide for the child's continuing safety and well-being. The court shall order the parents to contribute to the support of the child pursuant to child support guidelines as provided for in Section 118 and 119 of Title 43 of the Oklahoma Statutes.

F. An order appointing a permanent guardian shall:

Comment [DoHS98]: Editor's Note: Committee decided current g-ship review language should be placed here.

1. Require that the placement be reviewed within one (1) year after transfer and may require the permanent guardian to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review. Such order shall not require the Department to supervise the placement during such period.

2. Not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, unless periodic reviews are otherwise required by the court, and

3. Unless periodic reviews are required, the court may close the case, provided the order of permanent guardianship shall remain in full force and effect subject to the provisions of this subparagraph.

**NEW SECTION –
MODIFICATION OR TERMINATION OF PERMANENT GUARDIANSHIP**

A.1. A motion for modification or termination of the permanent guardianship may be filed by the permanent guardian, the child or the State. A modification or termination may also be ordered by the court on its own initiative. An order for modification or termination of the permanent guardianship may be entered after notice and opportunity for hearing and shall be based on a finding that there has been a substantial change of material circumstances, including, but not limited to the following:

- a. The child's parent is presently able and willing to properly care for the child;
- b. The child's permanent guardian is unable to properly care of the child;
- c. The child has been abused or neglected while in the care of the permanent guardian;
- d. The child's permanent guardian is deceased.

2. The court shall appoint a guardian *ad litem*, which may be a CASA, for the child in any proceeding for the termination of permanent guardianship.

B.1. The court may modify or terminate the order granting permanent guardianship upon a finding by clear and convincing evidence that there has been a substantial change in material circumstances and that a modification or termination of the permanent guardianship is in the child's best interest.

2. When the modification or termination of the permanent guardianship results in the removal of the child from the guardian's home, the court must find that the continuation of the child in the home of the guardian is contrary to the welfare of the child and whether:

Comment [OSCN99]: Allows a parent to come in and regain legal custody based on correction of conditions. But also makes it clear that child goes back into court, where other basis to revoke guardianship, as continued deprived child with DHS and court responsible for new permanency plan and notice to NPs.

Comment [CO100]: Federal IV-E findings must be made when a removal occurs.

- a. Reasonable efforts have been made to prevent the removal of the child from the child's home, or
- b. an absence of efforts to prevent the removal of the child from the child's home is reasonable because the removal is due to an emergency and is for the purpose of providing for the welfare of the child.

3. Where the termination of the order granting permanent guardianship is granted for reason of the guardian's abuse, neglect, death or inability to care for the child, the court shall order the child returned to the legal custody of the Department pending further hearing. The Department shall develop a new permanency plan on behalf of the child, which shall be presented to the court within thirty (30) days of the date the permanent guardianship is terminated.

Comment [DoHS101]: The court maintains jurisdiction for as long as the case is not dismissed & that's what give the court authority to hold reviews for as long as necessary. I suggest the court simply re-disposition the child back into the legal custody of the Department pending further hearing or order of the court.

a. Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been modified or terminated and shall be entitled to participate in the new permanency planning hearing where the court shall order a new permanency plan appropriate to meet the needs of the child.

b. The court may order that reunification services again be provided to the parent or parents if it is in the best interests of the child and consider the parent or parents as custodians with Department supervision if the parent can prove by a preponderance of the evidence that conditions which previously existed at the time of the granting of the permanent guardianship order have been substantially corrected and that reunification is the best alternative for the child.

OKLAHOMA CHILDREN'S CODE

ARTICLE 4 – DISTRICT COURT PROCEEDINGS IN DEPRIVED CASES
Part 8 Post-Dispositional, Placement & Miscellaneous Hearings

§10-7003-6.2. Appeals.

~~A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court pursuant to Section 7003-6.4 of this title and the rules of the Supreme Court of this state.~~

Comment [DoHS1]: Sub-section A moved to Article 5, Appeals

~~B. The pendency of an appeal thus taken shall not suspend the order of the district court regarding a child, nor shall it remove 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, except as provided in subsection C of this section. 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.~~

Comment [DoHS2]: Sub-section B moved to Article 5, Appeals

~~C. 1. If the court determines it would be in the best interests of a child, the court may place the child in the legal custody of the Department of Human Services. If the child is placed in the custody of the Department, the court may not direct the Department to place the child in a specific home or placement.~~

Comment [DoHS3]: Sub-section C(1) moved *infra* to be a "stand alone" statute.

§7003-6.2(C)(2)(3)(4)(5) STAND ALONE SECTION (Internal judicial review of release or placement order)

~~2 A.1.~~ At any hearing including, but not limited to, hearings conducted pursuant to Section 7003-8.6 ~~XXXX~~ of this title, where it is determined that a child in state custody will be released from state custody, the district attorney or the attorney for the child may give verbal notice to the court of an objection to the order of the court and an intention to seek review of that order based on the grounds that the order of the court releasing the child from state custody creates a serious risk of danger to the health or safety of the child.

Comment [DoHS4]: Parts A1-4 (as re-numbered here), will be a "stand alone" section and designated as an internal appeal or review section.

~~3 2.~~ Upon giving such notice, the court issuing the custody order in question shall stay the custody order filing of an application and completion of review as

provided in this section. The district attorney or attorney for the child shall file with the presiding judge of the administrative judicial district a written application for review within three (3) judicial days from the custody order. If a written application for review is not filed within such time period, or if a written notice to the trial court withdrawing the objection is filed within that time period, the objection will be deemed abandoned and the stay shall be lifted.

4 3. Each application for review shall be assigned by the presiding judge of the administrative judicial district to a judge within that administrative judicial district with juvenile docket responsibilities. The review shall be completed within five (5) judicial days of the filing of the written application for review. The review conducted by the reviewing judge shall address the question of whether releasing the child from state custody creates a serious risk of danger to the health or safety of the child. The reviewing court shall review the record of the hearing and any other evidence deemed relevant by the reviewing court. At the conclusion of the review, the reviewing court shall issue its findings of fact and conclusions of law and report them to the court issuing the custody order under review.

5 4. A finding by the reviewing court that the order releasing the child from state custody creates a serious risk of danger to the health or safety of the child shall be controlling and the court issuing the order under review shall proceed to enter a different custody order. If the reviewing court finds that the order under review does not create a serious risk of danger to the health or safety of the child and that the order is otherwise appropriate then the court issuing the order under

review shall lift the stay and the order shall be subject to appeal as provided in subsection A of this section. The failure of any court to issue the stay mandated by this subsection shall be subject to immediate mandamus to an appropriate court.

§10-7003-6.2A. Hearing to determine release of child from state custody.

Comment [C05]: Clean-up

A. At any hearing pursuant to the provisions of the Oklahoma Children's Code for the purpose of determining the placement of a child or that a child in state custody is to be released from state custody, the court shall provide an opportunity to a representative of the Department of ~~Human Services~~, the present foster parent, the guardian ad litem and the child, if of sufficient age as determined by the court, to present sworn testimony regarding the placement of the child or release of the child from state custody. In all cases in which the Office of Juvenile System Oversight has conducted an investigation regarding placement of a child or release of a child from state custody and believes there is a serious risk of danger to the health or safety of that child, the Oklahoma Commission on Children and Youth shall provide to the court and the parties a written report of their investigation and recommendation for placement of the child. Such report shall be provided to the court and the parties no less than five (5) days prior to the hearing. The court, upon motion of any party, shall order attendance of any person preparing such report when it appears there is a substantial likelihood that material evidence not contained in the report may be produced by the testimony of any person having prepared the report. The court shall consider the report when making his or her decision regarding placement of a child or release of a child from state custody.

B. The court, the district attorney or the attorneys for the parties may cross examine the representative of the Department of ~~Human Services~~, the child, if of sufficient age as determined by the court, the present foster parents, and the guardian ad litem.

C. The court shall issue written findings of fact and conclusions of law. All hearings concerning such cases shall be on the record. The failure of any court to provide an opportunity to a representative of the Department of ~~Human Services~~ or to the present foster parent, the guardian ad litem and to the child, if of sufficient age as determined by the court, to present the sworn testimony pursuant to this section shall be subject to immediate mandamus to an appropriate court.

§7003-6.2(C)(1) (STAND ALONE SECTION)

~~G. 1. If the court determines it would be in the best interests of a child, the court may place the child in the legal custody of the Department of ~~Human Services~~. If the child is placed in the custody of the Department, the court may not direct the~~

Comment [DoHS6]: Editor's Note: Moved here as a stand alone section. Clarification of judicial authority regarding placement decisions made by the Department.

~~Department to place the child in a specific home or placement. Whenever a child is in the custody of the Department, the court does not have the authority to order a specific placement of the child but does have the authority to approve or disapprove the specific placement if it does not conform to statutory requirements and the best interests of the child.~~

§7003-5.4a. Notification to Court when Child is Moved to Another Location - Emergency Situation - Movement of Deprived Child

A. 1. a. The Department of Human Services shall notify the court ~~having jurisdiction, the appropriate postadjudication review board, the appropriate district attorney, the child's attorney and court-appointed special advocate~~ the guardian ad litem of the child, if any, whenever a child in the custody of the Department is moved from one location to another.

b. The Department shall notify the foster family prior to movement of the child pursuant to the provisions of Section ~~7208~~ XXXX of this title.

c. The Department shall inform the ~~court court-appointed special advocate~~ guardian ad litem, if any, and the child's attorney of the specific location of the child.

2. ~~If the movement was due to an emergency situation, the~~ The notification required by this subsection section shall be made by the Department within one (1) business day a reasonable time after the Department is made aware of the need for after such movement but in no event less than two (2) judicial days prior to such movement, unless an emergency exists . As used in this subsection, section "emergency situation" means movement of a child that is:

a. pursuant to an order of the court, including, but not limited to an order authorizing placement of a child with a parent or sibling;

b. requested by the child-placing agency or foster parent of the child, if the request is made at a time when the business offices of the parties to be notified are closed and the request is for immediate removal of the child without delay or notice as provided by this section,

c for emergency medical or mental health treatment,

d for substantial noncompliance by a foster parent or child-placing agency with applicable placement standards and agreements such that ~~the health, safety or welfare of the child is endangered~~ in imminent danger, or

e due to a pending investigation of an allegation of abuse or neglect of a child by a foster parent or child-placing agency or other person residing in the foster family home.

B. 1. ~~The Department shall not move any deprived child from one placement 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.~~

2. ~~However, The Court, on its own motion, may hold, or any party receiving notice the Department may move any child due to an emergency pursuant to subsection A of this section, shall be granted, an informal in which case a hearing shall be conducted concerning the reasons and necessity for moving the child, if requested in writing, within ten (10) five (5) days following the receipt of notice, moving of the child.~~

3. ~~Court approval shall not be required for movement to or from a children's shelter due to an emergency, including a placement failure, a placement disruption, or similar cause.~~

§ 7208. Preplacement Visits - Child in Custody of Foster Parent for More than 3 Months - Removal - Change of Foster Home

A. ~~In making placements in foster care, the Department of Human Services, the Department of Juvenile Justice and any child-placing agency shall, if possible, arrange for a preplacement visit for any child five (5) years of age or older with the persons who will be providing foster care. Persons involved in the preplacement visits should make every effort to discuss with the child how the care, supervision, and guidance, including, but not limited to, parental substitute authority, shall be achieved.~~

Comment [C07]: Editor's Note: There is a need for foster parents to attend all hearings when possible and to provide information to the court. Many placement issues could then be resolved at a case review hearing.

B. If a child placed in the custody of a child-placing agency or in the custody of a ~~state agency~~ the Department by the court has resided with a foster parent for three (3) or more months:

Comment [C08]: Sub-section A is deleted because it is a policy-type statement
Approved 06-13-08

1. ~~Except in an emergency, the state agency Department or child-placing agency shall:~~

Comment [C09]: Clean up.

- a. give a minimum of five (5) judicial days' advance notice to the foster care family parent and to the court before removing a child from such family's care foster placement, and
- b. at the time of such notification, provide the foster family parent with a written statement of the reasons for removing a child; and.

2. An oral or written opinion may be provided to the court by a party or foster parent in support of or in opposition to any change in the child's placement planned or under consideration by the Department or child-placing agency.

Comment [CO10]: New language stresses the importance of foster parent feedback regarding placement and having concerns resolved by the court expeditiously.

3. The court shall resolve any concerns raised by a party or foster parent regarding a planned change in the child's placement during any hearing in which the concerns are brought to the court's attention or the court may schedule an informal placement review hearing that shall be heard within fifteen (15) judicial days from the date the concerns are brought to the court's attention. The court may in its discretion, stay a proposed change in placement until the informal placement review hearing is held.

Comment [CO11]: See above comment.

2 4. The foster parent shall, at any hearing, be entitled to submit to the court written reports or present testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to such other information the court may request.

~~C. B. When a child, under the jurisdiction of a court pursuant to the Oklahoma Children's Code, is placed in the custody of the Department of Human Services, or a child, under the jurisdiction of a court pursuant to the Juvenile Justice Code is placed in the custody of the Department of Juvenile Justice, or is placed in the~~

Comment [CO12]: Unnecessary and/or inapplicable language relating to delinquent children and their Juvenile Justice Code has been deleted.
Approved 06-13-08

~~custody of or~~ any child-placing agency, the ~~state agency~~ Department or child-placing agency shall have discretion to determine an appropriate foster placement for the child. Except as provided in this section, the ~~state agency~~ Department or child-placing agency may remove a child in its custody from a foster placement whenever the ~~state agency~~ Department or child-placing agency determines that removal is in the best interests of the deprived child, ~~or the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public.~~

DC. 1. In order to promote stability for foster children and limit repeated movement of such children from one foster placement to another, ~~the state agency~~ Department or child-placing agency, except as otherwise provided by this subsection, shall not change the foster home placement of a child without the approval of the court in the following circumstances:

- a. ~~the child has been moved once since the last court hearing~~ court or other party receiving notice from the Department of the movement of the child has filed a written request for an informal hearing, as provided in Section 7003-5.4a XXXX of this title, ~~or~~
- b. the court has stayed a planned change in a child's placement pending a judicial review due to a verbal or written objection made by a party or by a foster parent during a court proceeding; or,
- c. a foster parent with whom the child has resided for more than six (6) months objects, in writing pursuant to the provisions of this subsection,

Comment [C013]: See above comments.

after notice of the removal of the child by the ~~state agency~~ Department or the child-placing agency.

2. The objection shall be filed with the court by the foster parent and served on the ~~state agency~~ Department or child-placing agency within five (5) judicial days after receipt of the notice from the ~~state agency~~ Department or child-placing agency regarding removal of the child. The court shall provide for notice to other parties in the case.

3. Timely filing and service of the objection shall stay removal of the child pending review of the court unless the ~~state agency's~~ Department's or child-placing agency's stated reason for removal is:

~~a. due to an emergency situation.~~ As used in this subparagraph, "emergency situation" means a removal that is:

Comment [CO14]: Language clean-up. Addition of 2 circumstances that are grounds for emergency removal of a child from a foster home.

a. pursuant to an order of the court entered during or following a hearing, including, but not limited to an order authorizing placement of a child with a parent or sibling;

b. at the request of the foster parent;

~~(1)c.~~ for emergency medical or ~~mental~~ behavioral health treatment,

~~(2)d.~~ due to substantial noncompliance by the foster parent with applicable contract requirements and agreements such that the health, safety or welfare of the child is ~~endangered~~ in imminent danger, or

Comment [CO15]: Imminent danger to a child is required for emergency removal of a child when there is substantial non-compliance with contract requirements.

~~(3)e.~~ due to a pending investigation of allegations of abuse or neglect of a child by a foster parent or other person residing in the foster family home, or

~~b. reunification with a parent that contributed to the child being deprived, with the prior approval of the court.~~

4. The court shall conduct an informal placement review hearing within fifteen (15) working judicial days on any objection filed by a party or foster parent pursuant to this section. The court may order that the child remain in or be returned to the objecting foster parent's home if the court finds that the placement decision of the Department of Human Services or child-placing agency's decision to remove the child was arbitrary, or was inconsistent with the child's treatment and service permanency plan or not in the best interests of the child.

~~5. At the hearing, the Department of Human Services shall inform the court as to the reason why the foster child is being removed from the foster home. The Department of Human Services shall also inform the court as to the number of times a foster child has been moved within the foster family system.~~

Comment [CO16]: Clean-up. Reason for child's move is covered in above placement review hearing. The child's placement history will be reported in on-going review hearings.

§ 7003-5.5a Trial Home Reunification; Period of Supervision by Court ; Removal

~~Every child who has been returned to a person named in a petition shall be supervised for a period of six (6) months prior to dismissal of the case; provided, the court may increase or decrease the duration of such supervision as the best interests of the child may require. Supervision by the Department of Human Services during this period shall be in accordance with rules promulgated by the Commission for Human Services.~~

Comment [DoHS17]: New language has been created to clarify the Department's authority & responsibilities during trial home reunification and required federal court findings when a trial home visit is terminated by the Department as legal custodian without a court order.

A. 1. The court may order a trial home reunification by returning the child to the care of the parent or legal guardian from whom the child was removed for a period not to exceed six (6) months.

2. During the period of the trial home reunification, the Department shall:

a. Continue to have legal custody of the child thereby permitting the

Department to visit the child in the parent's home, at school, in a child

care facility, or other setting as the Department deems necessary and appropriate;

- b. Continue to provide appropriate services to both the parent, if eligible, and the child during the period of the trial home reunification;
- c. Without court order or authorization, terminate the trial home reunification in order to protect the child's health, safety, or welfare and remove the child to foster care;
- d. Advise the court and parties within three (3) judicial days of the termination of the trial home reunification when a visit is terminated by the Department without a court order; and
- e. Prepare a report for the court when the trial home reunification is terminated whether by the Department or court order which describes the child's circumstances during the trial home reunification and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability.

3. In the event a trial home reunification is terminated by the Department by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within fifteen (15) days of receiving notice of the termination of the trial home reunification by the Department and shall determine whether a continuation of the child in the child's home or with the child's caretaker is contrary to the welfare of the child and whether reasonable efforts were made to prevent the removal of the child from the trial home reunification.

Comment [CO18]: When trial home reunification is terminated w/o a court order, the court must make the federal required findings of "contrary to the welfare" & reasonable efforts to prevent removal.

§10-7003-5.6. Review of case.

A. 1. Every case regarding a child alleged or adjudicated to be deprived shall be reviewed by the court at a hearing no later than six (6) months from the date of the child's out-of-home placement removal from the home and at least once every six (6) months thereafter until permanency is achieved or the court otherwise terminates jurisdiction except as set forth in sub-paragraph 2 of this subsection. A review hearing may be held concurrently with a permanency hearing. A child shall be considered to have entered an out-of-home placement on the earlier of the adjudication date or the date that is sixty (60) days after the date on which the child is removed from the home. Such reviews shall continue until such time as:

Comment [DoHS19]: Amendments to this section include language clean-up; clarification of what the court must consider at every review hearing; changes comply with ASFA.

Comment [OSCN20]: Consistent with timing of permanency hearings – start counting with removal versus ASFA formula.

Comment [OSCN21]: Concise way of stating the matter stricken below.

- ~~1. The conditions which caused the child to be adjudicated have been corrected;~~
- ~~2. The parental rights of the parent are terminated and a final adoption decreed or the child is placed with a suitable custodian or kinship guardian; or~~
- ~~3. The court otherwise terminates jurisdiction.~~

2. When the Department has documented a compelling reason why a petition to terminate parental rights to a child is not in the best interests of the child that is based upon a consideration that the child is presently not capable of functioning in a family setting, the court shall reevaluate the status of the child every ninety (90) days until there is a final determination that the child cannot be placed in a family setting.

Comment [DoHS22]: Language added to provide for more frequent reviews in this circumstance.

3. At any time during the pendency of the case, any party may request the court to review the case. If granted, the requesting party shall serve notice on all parties of the date and time of the hearing.

Comment [OSCN23]: This language requires the moving party to provide notice of requested review.

~~B. The provisions of this section shall also apply to a child who has been removed from the home of the parent or parents, legal guardian or custodian of the child after the child has been returned to that home.~~

~~C. The court may set a case for a review hearing upon the motion of a party at any time, if the hearing is deemed by the court to be for the health, safety or welfare of the child and in the best interests of the child.~~

Comment [OSCN24]: Deletion of unnecessary language. Court will continue to review until jurisdiction over child is terminated.

~~D. In addition to the parties, adequate prior written notice of review hearings shall be provided by the Department pursuant to rules promulgated by the Commission for Human Services to the current foster parents, preadoptive~~

Comment [DoHS25]: ASFA requires the states to include this language in statutes. Language clean-up. Current language is awkward & confusing.

~~parent, or relative providing care for the child. A right to be heard at such hearings shall be provided by the court to the current foster parent of a child, the child's guardian ad litem, and to any preadoptive parent or relative providing care for the child. Such notice and right to be heard shall not be construed as requiring any foster parent, preadoptive parent or relative to be made a party to such deprived proceedings if not currently a party to the action.~~

B. If a foster parent, preadoptive parent or relative is currently providing care for a child, the Department shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child. A foster parent, preadoptive parent or relative providing care for a child has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

EC. The court shall receive all evidence helpful in deciding the issues before the court including, but not limited to, oral and written reports, which may be admitted and relied upon to the extent of their probative value, even though not competent for purposes of an adjudicatory hearing.

FD. At each review hearing the court shall:

1. Determine ~~whether~~ and include the following in its orders:

~~a. the child should be returned to the child's parent or placed with willing and suitable kinship relations. Before a return to the child's parent is ordered, the court must find that the parties:~~

- ~~(1) have complied with, performed, and completed the terms and conditions of the individual treatment and service plan which are essential and fundamental to the health, safety or welfare of the child as determined by the court,~~
- ~~(2) have corrected those conditions which caused the child to be adjudicated and which the court determines to be essential and fundamental to the health, safety or welfare of the child,~~
- ~~(3) have made marked progress towards reunification with the child, and~~
- ~~(4) have maintained a close and positive relationship with the child,~~

~~b. the child should continue in out-of-home placement for a specified period. The court shall project a likely date by which the child may be:~~

- ~~(1) returned to and safely maintained in the home,~~
- ~~(2) placed with a willing and suitable guardian or custodian, or~~
- ~~(3) placed for adoption, or other permanent arrangement,~~

Comment [C026]: Stricken language has been re-worked and incorporated below.

~~c. the rights of the parent of the child should be terminated and the child placed for adoption, placed with a guardian or custodian, or provided with another permanent arrangement, or
d. the child, because of exceptional circumstances, should remain in long term out-of-home placement as a permanent plan or with a goal of independent living;~~

Comment [OSCN27]: Deleted here because these are determinations for permanency hearings.

a. Whether the individualized service plan, services, and placement meet the special needs and best interests of the child, with the child's health, safety, and educational needs specifically addressed;

b. Whether there is a need for the continued placement of the child;

c. Whether the current permanency plan for the child remains the appropriate plan to meet the health, safety and best interests of the child;

d. Whether the services set forth in the individualized service plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances or as the court determines to be in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child.;

e. Whether the terms of visitation need to be modified, including the visitation with siblings, if separated;

f. What time frame should be followed to achieve reunification or other permanent plan for the child;

g. Whether reasonable efforts have been made to provide for the safe return of the child to the child's own home. If the court determines or has previously determined that reasonable efforts are not required pursuant to the provisions of Section 7003-4.6 XXXXX of this title, or that continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan for the child, the court shall determine if reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and determine the steps necessary to finalize permanency plan for the child;

h. Where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the child in making the transition from foster care to independent living, and shall also inquire, or cause inquiry to be made of the child, regarding any proposed independent living plan; and,

i. Whether the nature and extent of services being provided the child and parent or parents of the child are adequate and shall order that additional services be provided or studies, assessments, or evaluations be conducted, if necessary, to ensure the safety of the child and to protect the child from further physical, mental, or emotional harm, or to correct the conditions that led to the adjudication;

2. Consider in-state and out-of-state placement options for the child;

3. Make a determination as to whether:

~~a. reasonable efforts have been made to provide for the safe return of the child to the child's own home. In determining reasonable efforts, the child's health, safety or welfare shall be the paramount concern. If the court determines or has previously determined that reasonable efforts are not required, pursuant to the provisions of Section 7003-4.6 of this title, or that continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan for the child, the court shall determine if reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and to complete steps necessary to finalize permanent placement for the child, and~~

Comment [C028]: Moved up.

~~b. where appropriate, when the child is sixteen (16) years of age or older, services are being provided that will assist the child in making the transition from foster care to independent living, and shall also inquire, or cause inquiry to be made of the child, regarding any proposed independent living plan;~~

Comment [C029]: Moved up.

43. Determine the safety of the child and consider fully all relevant prior and current information including, but not limited to, the report or reports submitted pursuant to Sections 7208 XXXX and 7003-5.6a XXXX of this title;

~~5. Inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct that additional services be provided if necessary to ensure the safety of the child and to protect the child from further~~

Comment [C030]: Incorporated below.

~~physical, mental, or emotional harm, or to correct the conditions that led to the adjudication; and~~

~~6. Order such modification to the existing individual treatment and service plan as the court determines to be in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child.~~

Comment [C031]: Incorporated above.

E. 1. In making its findings, the court shall consider the following:

- a. Whether compliance with the individualized service plan has occurred; including whether the Department has provided care that is consistent with the health, safety and educational needs of child while in an out-of-home placement;
- b. The extent of progress that has been made toward alleviating or correcting the conditions that caused the child to be adjudicated deprived;
- c. Whether the child should be returned to his or her parent or parents and whether or not the child's health, safety and welfare can be protected by his or her parent or parents if returned home; and
- d. An appropriate permanency plan for the child, including concurrent planning when applicable, pursuant to Section XXXXX of this title.

§7003-5.6a Review hearing – Reports – Child's access to counsel

A. The Department of Human Services or the agency having supervision of the case or, if the child has been removed from the custody of ~~it's~~ the child's parents, the Department or the agency or child-placing agency having custody of such child shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

Comment [DoHS32]: Changes to this section provide extra instruction about the detailed information that is needed in reports submitted to the court for review hearings.

B. Such report shall include, but not be limited to:

1. A summary of the physical, mental, and emotional condition of the child, the conditions existing in the out-of-home placement where the child has been placed, and the child's adjustment thereto;

2. A report on the child's progress in school and, if the child has been placed outside the child's home, the visitation exercised by the parents of such child or other persons authorized by the court;

3. Services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other community placement to independent living; and

4. # When the Department is responsible for supervision of the child or is the legal custodian of the child, a description of:

- a. ~~any efforts~~ Progress on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived;
- b. Changes that still need to occur and the specific actions the parents should take to make the changes; and,
- c. Services and assistance that have been offered or provided to the parents since the previous hearing and the services which are needed in the future.

5. A description of the of the child's placements by number and type with dates of entry and exit, reasons for the placement or change in placement and a statement about the success or lack of success of each placement.

6. The Department's efforts to locate the parents and involve them in the planning for the child if the parents are not currently communicating with the Department.

7. Compliance by the Department, as applicable, and the parent with the court's orders concerning the individualized service plans, previous court orders and the Department recommendations;

8. Whether the current placement is appropriate for the child, its distance from the child's home, and whether it is the least restrictive, most family like placement available.

9. A proposed timetable for the child's return to the home or other permanent placement.

10. Specific recommendations, giving reasons therefor, whether:

- ~~a. the parental rights of the parent or parents of the child should be terminated and the child placed for adoption;~~
- ~~b. the child should remain in the home or be placed outside the home of the child's lawful parents, or~~
- ~~c. the child should remain outside the home or be returned to the home from which the child was removed.~~

Comment [OSCN33]: Recommendations regarding permanency plan is proper issue for permanency hearing.

- a. Trial reunification should be approved by the court, or
- b. Trial reunification should be continued to _____ ;
- c. The child should remain or be placed outside the home of the child's parent or legal guardian;
- d. The child should remain in the current placement when the permanency plan is other than reunification with the child's parent or legal guardian.

C. The attorney representing a child and the guardian ad litem of a child, if any, 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.

§10-7003-4.6. Returning child to home (Reasonable Efforts Not Required)

~~A. The court, on its own motion or upon motion of a party, may determine that reasonable efforts to provide for the return of a child to the child's home or to preserve the family of the child shall not be required prior to or following the adjudicatory hearing, if the court determines based upon competent evidence that:~~

Comment [C034]: Editor's Note: Sub-section A has been re-written to include only ASFA & CAPTA aggravated circumstances rather than those that currently exist.

A. At any time prior to or following the adjudicatory hearing, the court, on its own motion or upon motion of a party, may find that reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required, if the court determines based upon a preponderance of the evidence that:

~~1. The parent, legal guardian or custodian has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;~~

1. The parent or legal guardian of the child, who is an infant age twelve (12) months or younger, has been subjected to abandonment;

~~2. The child or a sibling of the child:~~

~~a. — has been previously adjudicated deprived pursuant to the Oklahoma Children's Code or laws from other states or territories as a result of sexual abuse or severe physical abuse,~~

~~b. — following adjudication, has been removed from the custody of the parent, legal guardian or custodian,~~

~~c. — has been returned to the custody of the parent, legal guardian or custodian from whom the child had originally been taken, and~~

~~d. — has been removed from the custody of the parents, legal guardian or custodian of the child, pursuant to the provisions of the Oklahoma Children's Code, due to sexual abuse or severe physical abuse;~~

2. The child's parent or legal guardian has:

a. Committed murder or manslaughter of any child;

b. Aided or abetted, attempted, conspired or solicited to commit the murder or manslaughter of any child;

c. Committed a felony assault upon any child that resulted in the child receiving serious bodily injury; or,

d. Subjected any child to aggravated circumstances, including but not limited to, heinous and shocking abuse or heinous and shocking neglect; or

~~3. The child is an abandoned infant;~~

3. The parental rights of a parent to the child's sibling have been terminated involuntarily.

~~4. The parent, legal guardian or custodian of the child has been convicted of the murder of any child or aided or abetted, attempted, conspired or solicited the commission of murder of any child;~~

~~5. The parent, legal guardian or custodian of the child has been convicted of voluntary manslaughter of another child of the parent, legal guardian or custodian or aided or abetted, attempted, conspired in or solicited the commission of voluntary manslaughter of another child of the parent, legal guardian or custodian or another child within the household where the child resided;~~

~~6. The child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of sexual abuse, severe neglect or a felonious assault resulting in serious bodily injury to the child, a sibling of the child, or a child within the household where the child resides, by the parent, legal guardian or custodian of the child;~~

- ~~7. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;~~
- ~~8. The parents have deserted a child without good cause or excuse and such desertion continues for a period of at least six (6) months immediately prior to the filing of the petition adjudicating the child deprived or petition to terminate parental rights;~~
- ~~9. The parent of the child willfully abandoned the child without regard to length of abandonment, and the court finds that the abandonment itself constituted a serious danger to the health and safety of the child;~~
- ~~10. A child has resided out of the child's home under court order for a cumulative period of more than one (1) year within a three-year period following a deprived child adjudication;~~
- ~~11. a. The court ordered a permanent plan of adoption, guardianship, or other permanent out-of-home placement for any siblings of the child because the parent failed to correct the conditions which led to initial court intervention with the sibling after the sibling had been removed from that parent, or
b. The parental rights of a parent over any sibling of the child had been permanently severed and, according to the findings of the court, the parent had not subsequently made a reasonable effort to correct the problems that led to removal of the sibling of that child from that parent;~~
- ~~12. The parent, legal guardian or custodian who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state or who has been convicted of a sexual felony offense pursuant to Section 1024.2, 1031, 1040.52, 1040.53, 1081, 1085, 1086, 1117, 1118, 1119, 1192 or 1192.1 of Title 21 of the Oklahoma Statutes; or~~
- ~~13. The parent, legal guardian or custodian of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the deprived petition which brought that child to the court's attention.~~

B. Upon a determination by the court that any of the conditions specified in subsection A of this section exist, the court shall conduct a permanency hearing within thirty (30) days of the determination by the court pursuant to the provisions of ~~Section 7003-5.6d of this title~~. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan.

~~C. Except when a petition for the termination of parental rights is required to be filed pursuant to the provisions of Section 7003-4.7 of this title, the district attorney, the child's attorney, or both may file a petition for termination of parental rights.~~

Comment [DoHS35]: Deleted.
Currently in TPR section.

§7003-5.6e – (Permanency) Report, Meeting & Preparation

A. 1. When a child has been in out of home care for 12 months or longer, the court may require that the Department facilitate a permanency meeting, be held no later than 30 days prior to the permanency hearing, to discuss recommendations regarding the child's permanency plan that will be reported to and reviewed by the court.

Comment [C036]: This sub-section has been added to give the court discretion to direct a permanency meeting to be held prior to the permanency hearing.

2. The court may direct that the assigned guardian ad litem, which may be a court-appointed special advocate, if any, a judicial case manager or the Department make arrangements for the meeting. The foster parents of the child, the parents of the child or the parents' attorney, a postadjudication review board member, the guardian ad litem who has been appointed to the case, the child and others as appropriate, and child's attorney shall be contacted to assist in the preparation of the report; provided, however, persons determined not to require reasonable efforts pursuant to the provisions of Section XXXX of this Title shall not be required to attend.

AB. 1. Prior to a permanency hearing, the Department of Human Services shall prepare a report regarding the child for court review and shall provide a copy of the report to the court and the parties not less than three (3) judicial days prior to the permanency hearing.

Comment [C037]: Clarification of the content of the permanency report, completion & distribution.

2. The report shall include the Department's proposed permanency plan, the Department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement and examine the reasons for excluding higher prior options.

3. The Unless a permanency meeting has been conducted, the Department, as applicable, shall contact the foster parents of the child, the parents of the child or the parents' attorney, a postadjudication review board member, the guardian ad litem or the court appointed special advocate who has been appointed to the case, and the child's attorney to assist in the preparation of the report.

~~BC.~~ The up-to-date and accurate report shall also contain, but not be limited to the following information, if relevant:

Comment [C038]: Clean-up.

1. Efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan;
- ~~2. Extent to which the parent or legal guardian cooperated and used the services provided;~~
3. Status of the child, including the child's ~~mental~~ behavioral, physical, and emotional health; ~~and~~
4. A recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefor, and the anticipated date for meeting the goal;
5. A recommendation regarding whether the child's placement should be extended and the reasons for the recommendation;

~~4. Plan for permanency for the child.~~

Comment [OSCN39]: Located in introductory paragraph above.

~~C.~~ The child's attorney, the parents or parents' attorney, the foster parent, the postadjudicatory review board member, the guardian ad litem or the court appointed special advocate of the child, ~~or the Department of Human Services~~ may submit ~~an~~ additional informational reports to the court for review.

Comment [C040]: Clean-up.

§10-7003-5.6d. Permanency hearing.

A. 1. The court shall conduct a permanency hearing ~~on behalf of a child to~~ determine the appropriate permanency goal for the child and to order completion of all steps necessary to finalize the permanent plan. The hearing shall be held no later than:

Comment [OSCN41]: States the purpose of this hearing

- a. six (6) months after placing the child in out-of-home placement and every six (6) months thereafter, and

b. thirty (30) days after a determination by the court that reasonable efforts to return a child to either parent are not required pursuant to the provisions of Section 7003-4.6 ~~XXXX~~ of this title ~~and every six (6) months thereafter~~.

Comment [OSCN42]: Clarifies: reasonable efforts to reunify

2. A child shall be considered to have entered out-of-home placement on the earlier of:

a. the adjudication date, or

b. the date that is sixty (60) days after the date on which the child is removed from the home.

2. Subsequent permanency hearings must be held at least every six (6) months for any child who continues to be in an out of home placement. At the request of a party, the Department or on the court's own motion, the initial and subsequent permanency hearings may be held more frequently.

3. At each permanency hearing, the court may consider testimony of any person who has relevant information about the status of the child or the status of the treatment plan. All parties shall have the opportunity to present evidence and to cross-examine witnesses. The rules of evidence shall not apply to permanency hearings and all evidence helpful in determining the proper permanency goal shall be considered, including but not limited to oral and written reports, which may be admitted and may be relied upon to the extent of their probative value, even though not competent for the purposes of the adjudicatory hearing.

Comment [OSCN43]: It is my opinion that ASFA views permanency hearings to be as critical as disposition hearings. Although, not required to be formal hearings, permanency hearings should be distinguished from mere review hearings.

Comment [DoHS44]: This language was added to clarify the type of information that can be presented at a permanency hearing & that the rules of evidence do not apply.

~~B. A permanency hearing may be held concurrently with a dispositional or review hearing. All permanency decisions must be in writing and in accordance with the health, safety or welfare of the child and the long term best interests of the child. In the case of a child who will not be returned to the parent, the hearing shall consider in-state and out-of-state permanent placement options.~~

Comment [OSCN45]: This is restated below.

~~C. In addition to the parties, adequate prior written notice of permanency hearings shall be provided by the Department pursuant to rules promulgated by the Commission for Human Services to the current foster parents and to any preadoptive parent or relative providing care for the child. A right to be heard at such hearing shall be provided by the court to the current foster parents of a child, the child's guardian ad litem, and to any preadoptive parent or relative providing care for the child. Such notice and right to be heard shall not be construed as requiring any foster parent, preadoptive parent or relative to be made a party to such action.~~

Comment [CO46]: Editor's note: This language is stricken & re-written below to be consistent w/ the companion section under review hearings.

If a foster parent, preadoptive parent or relative is currently providing care for a child, the Department shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child. A foster parent, preadoptive parent or relative providing care for a child has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

D. At the hearing, the court shall determine ~~or review the continued~~ appropriateness of the most suitable child's permanency plan, and whether a change in such plan is necessary; the date by which the goal of permanency for the child is scheduled to be achieved and whether the child's current placement continues to be the most suitable for the child's health, safety and welfare. based on the child's need for a permanent placement as indicated by the recommended permanency plan or other evidence submitted and The court shall also, in an age-appropriate manner, inquire or cause inquiry to be made of the child regarding the proposed permanency plan and if the child is age sixteen (16) or older, the independent living plan. ~~The court shall determine whether:~~

Comment [OSCN47]: Each permanency hearing does not require a new plan – it may just reaffirm the pre-existing plan; we are reviewing whether this is still a suitable plan.

~~1. The child should be returned home immediately or by a specified date not to exceed three (3) months. An order entered pursuant to the provisions of this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which must occur by the specified date before the child may be returned home. Before a child may be returned home, the court must find that:~~
a. ~~the parent, legal guardian or custodian has made marked progress towards reunification with the child, and has maintained a close and positive relationship with the child, and~~

Comment [DoHS48]: All deletions through "E" were approved because these parts have been re-worded below.

- ~~b. the parties have complied with, performed and completed those terms and conditions of the court ordered individual treatment and service plan and have corrected those conditions which caused the child to be adjudicated which are essential and fundamental to the health, safety and welfare of the child;~~
- ~~2. A plan for the guardianship or kinship guardianship of the child should be approved;~~
 - ~~3. The child should be placed in a planned permanent living arrangement if the Department has documented a compelling reason for the court to determine that it would not be in the best interests of the child to return home, or to be placed for adoption or with a fit and willing relative or a legal guardian;~~
 - ~~4. A petition to terminate the rights of the parents of the child should be filed and the child placed for adoption; or~~
 - ~~5. Any other out-of-home placement in which the child is placed continues to be safe and appropriate and in the best interests of the child.~~

Comment [OSCN49]: All to be reworded below

~~E. The court shall enter an order for completion of all steps necessary to finalize the permanent placement of the child. -A transcript shall be made of each permanency hearing or the proceeding shall be memorialized by appropriate written findings of facts and the court having considered all relevant information shall order one of the following permanency plans for the child:~~

Comment [CO50]: Amend this sub-section & addition of subsections F & G to ensure a record is made of each permanency hearing and that all relevant information & statutory factors are considered.

1. Reunification with the child's parent, parents, or legal guardian where reunification can be expected to occur within an established time frame that is consistent with the child's developmental needs and where the child's health and safety can be adequately safeguarded if returned home;
2. Placement for adoption after the parents' rights have been terminated or after a petition has been filed to terminate parental rights;
3. Placement with a person who will be the child's permanent guardian and can adequately and appropriately safeguard the child's health, safety and welfare;
4. Placement in the legal custody of the Department under a planned permanent living arrangement, provided that there are compelling reasons documented by the Department and presented to the court that

none of the above described plans is appropriate for the child's health, safety and welfare.

F. In addition to the findings required under subsection (E), the court shall also make written findings related to:

1. Whether the Department has made reasonable efforts to finalize the permanency plan that is in effect for the child and a summary of the efforts the Department has made; or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);.
2. If the permanency plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and
3. If the current placement is not expected to be permanent, the court's projected timetable for return home or for placement in an adoptive home, with a guardian or another planned permanent living arrangement.

G. The court may make appropriate orders to ensure timely implementation of the permanency plan and shall order the plan to be accomplished within a specified period of time.

§10-7003-5.6h. Permanency hearings - Eligibility of foster parent to adopt.

A. During any permanency hearing, if it is determined by the court that a child should be placed for adoption, the foster parent of the child shall be considered eligible to adopt the child, if the foster parent meets established eligibility requirements pursuant to this section.

Comment [DoHS51]: New factors added for the court to consider at a permanency hearing.

B. If the child has resided with a foster parent for at least one (1) year, the court shall give great weight to the foster parent in the adoption consideration for the child unless there is an existing loving emotional bond with a relative of the child by blood or marriage who is willing, able and eligible to adopt the child.

C. In making such determination, the court shall consider whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall consider, without limitation:

1. The love, affection, and other emotional ties existing between the child and the relatives of the child, and the child's ties with the foster family;
2. The capacity and disposition of the child's relatives as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;
3. The length of time a child has lived in a stable, satisfactory foster home and the desirability of the child's continuing to live in that environment;
4. The physical and mental health of the relatives of the child as compared with that of the foster family;
5. The experiences of the child in the home, school, and community, both when with the parents from whom the child was removed and when with the foster family; ~~and~~
6. The age of the child and the child's preference;
7. The long term best interests of the child; and,

8. Any other factor considered by the court to be relevant to a particular placement of the child.

~~§10-7003-5.6e. Reports.~~

~~A. Prior to a permanency hearing, the Department of Human Services shall prepare a report regarding the child for court review. The Department, as applicable, shall contact the foster parents of the child, the parents of the child or the parents' attorney, a postadjudication review board member, the guardian ad litem or the court appointed special advocate who has been appointed to the case, and the child's attorney to assist in the preparation of the report.~~

~~B. The report shall contain the:~~

- ~~1. Efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan;~~
- ~~2. Extent to which the parent or legal guardian cooperated and used the services provided;~~
- ~~3. Status of the child, including the child's mental, physical, and emotional health; and~~
- ~~4. Plan for permanency for the child.~~

~~C. The child's attorney, the parents or parents' attorney, the foster parent, the postadjudicatory review board member, the guardian ad litem or the court appointed special advocate of the child, or the Department of Human Services may submit an additional informational reports to the court for review.~~

Comment [DoHS52]: Editor's Note: This is now a duplicate statute & is captured under the statute above that now includes the old permanency meeting that is to occur before permanency hearing.

§10-7003-5.6f. Agreements by birth relatives.

~~A. 1. If a child has resided with a birth relative before being adopted, the adoptive parents and that birth relative may enter into an agreement pursuant to the provisions of this section regarding communication with, visitation of or contact between the child, adoptive parents and the birth relative. When the court, pursuant to Section XXXX, finds that a deprived child should be placed for adoption, nothing in the adoption laws of this state shall be construed to prevent the prospective adoptive parent or parents petitioners for adoption of the child from voluntarily entering into a written agreement with the birth relatives, including a birth parent, to permit continuing post-adoption contact between the birth relatives and the child. The agreement must be found by the court to have~~

Comment [OSCN53]: 9-25-08
redundant to paragraph 1 below

Comment [OSCN54]: 9-25-08
redundant

been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted and poses no threat to the safety of the child. The post-adoption contact agreement shall be issued by the court by a separate instrument at the time an adoption decree is entered, if the court finds the agreement is voluntary, does not pose a threat to the safety of the child; and, is in the best interests of the child.

Comment [OSCN55]: Reworded and now gives standing to all relatives – even if child has not resided with that relative.

B. 2. For purposes of this section, "birth relative" means a parent, stepparent, grandparent, great-grandparent, ~~brother, sister sibling~~, uncle or aunt of a minor adoptee. This relationship may be by blood or marriage, provided a sibling relationship may be by whole or half blood, marriage or affinity through a common legal or biological parent. For an Indian child, birth relative includes members of the extended family as defined by the laws or customs of the Indian child's tribe or, in the absence of laws or customs, shall be a person who has reached eighteen (18) years of age and who is the Indian child's great-grandparent, grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece, nephew, or first or second cousin or stepparent, as provided in the Indian Child Welfare Act, United States Code, Title 25, Section 1903.

3. If a child who is separated from his or her siblings is ordered to be placed for adoption, the court shall order that the Department shall take all of the following steps to facilitate ongoing sibling contact or visitation:

- a. Provide information to prospective adoptive parents about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships;

- b. Provide prospective adoptive parents with information about siblings of the child, provided, the address where the siblings reside shall not be disclosed unless authorized by a court order for good cause shown; and
- c. Encourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child who is the subject of a petition for adoption and any siblings of that child.

Comment [OSCN56]: Emphasis on continued sibling contact and requires DHS to work with adoptive parents to comprehend the importance of continued sibling contact.

4. The terms of the postadoption agreement executed under this section shall be limited to, but need not include, the following if the child has an existing relationship with the birth relative:

- a. provisions for visitation between the child and the birth relatives;
- b. provisions for contact between birth relatives and the child or an adoptive parent, or both;
- c. provisions for the adoptive parent to facilitate sibling contact or visitation;
- d. provisions for the sharing of information about the child.

5. The terms of any postadoption agreement shall be limited to the sharing of information about the child if the child did not have an existing relationship with the birth relative.

~~GB1. An A postadoption agreement regarding communication with, visitation of or contact between the child, adoptive parents and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section.~~

2. An order must be sought and shall be filed in the adoption action. The order shall be issued by separate instrument at the time an adoption decree is entered.

Comment [OSCN57]: Time that this order is to be entered – at time of decree of adoption.

3. The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, the birth relative

who desires to be a party to the agreement, the child, if 12 years of age or older,

Comment [OSCN58]: New. Allow child to be a party to this agreement.

and, if the child is in the custody of the Department of Human Services, a representative of the Department. The child shall be represented by an attorney for purposes of consent to the postadoption agreement.

Comment [OSCN59]: With assistance of counsel.

4. The postadoption agreement approved by the court regarding sibling contact or visitation shall be provided by the Department to the adoptive parent or parents, foster parent, relative caretaker, legal guardian of the child and siblings or others as necessary to facilitate the sibling contact or visitation.

~~§ C.~~ Failure to comply with the terms of ~~an agreed order regarding communication, visitation or contact that has been entered~~ the postadoption agreement as ordered by the court pursuant to this section shall not be grounds for:

1. Setting aside an adoption decree;
2. Revocation of a written consent to an adoption after that consent has become irrevocable;
3. An action for citation of indirect contempt of court; and

4. Preventing the adoptive parent or parents of the child from changing residence within or outside the state.

Comment [OSCN60]: This comes from my divorce law experience....

F. 1. Although the entry of the decree of adoption terminates the jurisdiction of the juvenile court over the child, the enforcement of the postadoption agreement and subsequent order shall be under the continuing jurisdiction of the court granting the petition of adoption.

Comment [OSCN61]: Juvenile court that enters the ability to enforce the terms of the agreement

~~An agreed order entered pursuant to the provisions of this section may be enforced or modified by filing a petition or motion with the court that~~

~~includes a certified copy of the order granting the communication, contact or visitation, but only if the petition or motion is accompanied by an affidavit with supporting documentation that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.~~

2. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required.

Comment [OSCN62]: ...Parties must mediate – at their cost

Comment [OSCN63]: ...and no formal evidentiary hearing required – just on stipulations and documents.

23. The prevailing party may be awarded reasonable attorney fees and costs. All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child.

3. G. 1. ~~The court shall not modify an agreed order pursuant to this section~~ A postadoption agreement may be modified or terminated only if the court ~~unless it~~ finds that the modification or termination is necessary to serve the best interests of the child and ~~the modification is agreed to by the adoptive parent and the birth relative~~ all parties, including the child if the child is 12 years of age or older at the time of the requested modification or termination.

Comment [OSCN64]: New. Added termination of agreement.

§10-7003-6.1. Modification of decrees or orders.

Any decree or order made pursuant to the provisions of the Oklahoma Children's Code may be modified by the court at any time; provided, however, that an order terminating parental rights shall not be modified.

OKLAHOMA CHILDREN'S CODE
ARTICLE 4 – COURT PROCEEDINGS
PART 9 – TERMINATION OF PARENTAL RIGHTS

§10-7002-3.1(B) STAND ALONE SECTION. Petitions

B. 1. A petition or motion for termination of parental rights may be filed independently by either the district attorney or the attorney of a child alleged to be or adjudicated deprived.

Comment [DoHS1]: This subsection moved here because it deals with termination of parental rights.

Comment [MAM2]: This section also includes the provisions from Section 7006-1.1.D.

2. A petition or motion for termination of parental rights shall be filed by the district attorney for those petitions or motions required to be filed pursuant to the provisions of Section ~~15~~ XXXX(7003-4.7) of this ~~act~~ title.

3. If a child's attorney files a petition or motion for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section ~~15~~ XXXX(7003-4.7) of this ~~act~~ title, unless an exception to filing exists.

§10-7003-4.7. Petition for termination by district attorney.

A. The district attorney shall file a petition or motion for termination of the parent-child relationship and parental rights with respect to a child or shall join in the petition or motion, if filed by the child's attorney, in any of the following circumstances:

Comment [DoHS3]: This section moved here since it deals w/ termination of parental rights (TPR). Amendments to this section are clean-up.

1. Prior to the end of the fifteenth month when a child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty-two (22) months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the date of adjudication as a deprived child, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

~~2. Prior to the end of the fifteenth month when a child has been placed in foster care by the Department of Juvenile Justice or in a child care institution, as defined in Section 472(e)(2) of the Social Security Act, by the Department of Juvenile Justice for fifteen (15) of the most recent twenty-two (22) months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:~~

- ~~a. the date of disposition as a delinquent, or~~
- ~~b. the date that is sixty (60) days after the date on which the child is removed from the home;~~

3. No later than sixty (60) days after a child has been judicially determined to be an abandoned infant;

4. No later than sixty (60) days after a court has determined that reasonable efforts to reunite are not required due to a felony conviction of a parent who has:

- a. committed the murder of any child or has aided or abetted, attempted, conspired in, or solicited the commission of the murder of any child,
- b. committed voluntary manslaughter of another child of the parent, or has aided or abetted, attempted, conspired in, or solicited the commission of voluntary manslaughter of another any child of the parent, or
- c. committed a felony assault that has resulted in serious bodily injury to the child or to another any child of the parent.

B. ~~If any of the following conditions exist, the district attorney is not required to file a~~ petition as provided in subsection A of this section for a deprived child:

- 1. At the option of the Department of Human Services or by order of the court, the child is properly being cared for by a relative.
- 2. The Department of Human Services has documented in the child's case plan that ~~is provided or available to the court~~ a compelling reason for determining that filing ~~the~~ a petition to terminate parental rights would not ~~be in~~ serve the best interests of the child that may include consideration of any of the following circumstances:

- a. The parents or legal guardians have maintained a relationship with the child and the child would benefit from continuing this relationship;

Comment [C04]: Editor's Note:
This subsection deleted because it deals with OJA.
Approved 10-10-08

Comment [DoHS5]: Editor's Inquiry: Amendment includes "any child" rather than only a child of the parent.

Comment [OSCN6]: Additional compelling reasons that are often used by the State or DHS have been included. ASFA says compelling reasons should be case-by-case and only gives examples. Each state should set forth its own examples – which these are.

Comment [OSCN7]: #4-8 are additional compelling reason an agency might consider in determining a TPR would not be in child's best interests.

b. The child, who is twelve (12) years or older, objects to the termination of the parent-child legal relationship;

c. The child's foster parents are unable to adopt the child because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the child but are willing and capable of providing the child with a stable and permanent environment, and the removal of the child from the physical custody of the foster parents would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the foster parents;

d. The child is not capable of achieving stability if placed in a family setting; or,

e. The child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues; or,

3. The state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child;

~~C. If any of the following conditions exist, the district attorney is not required to file a petition as provided in subsection A of this section for a delinquent child:~~

- ~~1. At the option of the Department of Juvenile Justice or by order of the court, the child is properly being cared for by a relative; or~~
- ~~2. The Department of Juvenile Justice has documented in the child's case plan that is provided or available to the court a compelling reason for determining that filing the petition would not be in the best interests of the child.~~

Comment [C08]: Stricken as unnecessary. If a delinquent child needs parental rights terminated, a deprived proceeding will need to be initiated.

NEW SECTION: STATE TO SHOW CAUSE WHY TERMINATION NOT BEING FILED

Comment [DoHS9]: New section for the State to show cause why they are not filing TPR when adoption is the permanency goal for the child. Approved 10-10-08

A. If the court finds from the information presented by the Department that the permanency plan for the child should be adoption, the court may order the State to show cause why it should not file a petition or motion to terminate the parent-child legal relationship pursuant to Section XXXX of this title. Good cause may include, but need not be limited to, any of the following conditions:

- 1. At the option of the Department or by order of the court, the child is properly being cared for by a relative.
- 2. The Department has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the best interests of the child; or,
- 3. The state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child.

§10-7006-1.1. Termination of parental rights in certain situations.

~~A. Pursuant to the provisions of the Oklahoma Children's Code, 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; provided, however, the paramount consideration in proceedings concerning termination of parental rights shall be the health, safety or welfare and best interests of the child:~~

Comment [DoHS10]: Unnecessary language deleted.

A court shall not terminate the rights of a parent to a child unless:

Comment [DoHS11]: This added language is to clarify that there must be a predicate deprived adjudication and a finding of "best interests" in every TPR case

- 1. The child has been adjudicated to be deprived either prior to or concurrently with a proceeding to terminate parental rights; and,
- 2. Termination of parental rights is in the best interests of the child.

Comment [DoHS12]: Editor's Note: paragraph separated for emphasis that both predicates must be met before TPR.

B. The court may terminate the rights of a parent to a child based upon the following legal grounds:

~~1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph 4 of subsection B of Section 7503-2.1 of this title, who desires to terminate such parent's parental rights; provided that the court finds that such termination is in the best interests of the child;~~

Comment [DoHS13]: Editor's Note: Consent to TPR has been re-written to comply with ICWA and other applicable law.

Upon the duly acknowledged written consent of a parent, who voluntarily agrees to termination of parental rights.

- a. The voluntary consent for termination of parental rights shall be signed under oath and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that the consent was translated into a language that the parent understood.
- b. A voluntary consent for termination of parental rights is effective when it is signed and may not be revoked except upon clear and convincing evidence that the consent was executed by reason of fraud or duress; however,
- c. Notwithstanding the provisions in this sub-paragraph, in any proceeding for a voluntary termination of parental rights to an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination. Any consent given prior to, or within ten (10) days after, birth of an Indian child shall not be valid.

~~2. A finding that a parent who is entitled to custody of the child has abandoned the child;~~

Comment [DoHS14]: Language amended to eliminate unnecessary & confusing language. The terms "abandonment" & "infant" have been separately defined in order to simplify and clarify.

For purposes of this paragraph the term “abandonment” includes, but is not limited to, the following:

- a. the parent has left the child alone or in the care of another who is not the parent of the child without identifying the child or furnishing a means of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the child alone or in the care of another who is not the parent of the child and expressed a willful intent by words, actions, or omissions not to return for the child, or
- c. the parent fails to establish and/or maintain a substantial and positive relationship with the child for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this paragraph, “establish and/or maintain a substantial and positive relationship” includes, but is not limited to:
 - (1) frequent and regular contact with the minor through frequent and regular visitation and/or frequent and regular communication to or with the child, and
 - (2) the exercise of parental rights and responsibilities.Incidental or token visits or communications shall not be sufficient to establish and/or maintain a substantial and positive relationship with the child;

3. A finding that the child is an abandoned infant;

Comment [DoHS15]: See comment in subsection 2.

4. A finding that the parent of a child:

- a. has voluntarily placed physical custody of the child with the Department of Human Services or with a child-placing agency for out-of-home placement,
- b. has not complied with the placement agreement, and
- c. has not demonstrated during such period a firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child;

5. A finding that:

Comment [DoHS16]: Simplified and eliminated unnecessary language.

- a. the child has been adjudicated to be deprived, and
- b. such condition is caused by or contributed to by acts or omissions of the parent, and

Comment [CO17]: This is an unnecessary TPR element since this issue will be determined at the initial adjudication stage.

c. termination of parental rights is in the best interests of the child, and

Comment [DoHS18]: Language simplified.

the parent has failed to show that correct the condition which led to the deprived adjudication of a the child deprived has been corrected although the

parent has been given not less than the time specified by Section 7003-5.5 of

this title three months to correct the condition; and,

b. the parent has been given at least three months to correct the condition;

6. A finding that:

~~a. subsequent child has been 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. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney or the child's attorney;~~

a. the parent's rights to another child have been terminated; and

b. the conditions that led to the prior termination of parental rights have not been corrected;

7. A finding that:

~~a. a the parent who does not have custody of the child, has for a period of at least six (6) out of the twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a the petition for termination of parental rights, willfully failed or refused or has neglected to contribute to the support of such the child:~~

~~a. in substantial compliance with~~

i. as specified by an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or

ii. where an order of child support does not exist, according to such the parent's financial ability to contribute to such the child's support if no provision for support is provided in an order.

Incidental or token support shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

~~8. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 or 1123 of Title 21 of the Oklahoma Statutes, or Section 7115 of this title; A finding that the parent has been convicted in a court or competent jurisdiction in any State of any of the following acts:~~

a. permitting a child to participate in pornography;

Comment [DoHS19]: Language has been simplified & clarified.

Comment [DoHS20]: Adjudication language added for consistency with the other sections.

Comment [DoHS21]: The amount of time that would trigger a TPR for failure to pay child support has been shortened to 6 out of the preceding 12 months. This will decrease the amount of time a child remains in foster care pending a permanent arrangement.

Comment [DoHS22]: Criminal convictions for specific crimes have been enumerated to provide legal grounds for TPR.

Comment [CO23]: Editor's Note: By using the term "acts" rather than the term "crimes" we allow for convictions of comparable crimes in other jurisdictions to be used in this State as a TPR ground.

- b. rape, or rape by instrumentation;
- c. lewd molestation of a child under sixteen years of age;
- d. child abuse or neglect;
- e. enabling child abuse or neglect;
- f. causing the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child;
- g. causing the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling;
- h. murder of any child or aiding or abetting, attempting, conspiring or soliciting to commit murder of any child;
- i. voluntary manslaughter of any child;
- j. a felony assault that has resulted in serious bodily injury to the child or another child of the parents; or
- k. murder or voluntary manslaughter of the child's parent or aiding or abetting, attempting, conspiring or soliciting to commit murder of the child's parent;

9. A conviction in a criminal action that the parent finding that:

- a. ~~caused the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child~~
- ~~caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,~~
- ~~the parent has been convicted by any court of competent jurisdiction of any of the following:~~
 - i. ~~murder or voluntary manslaughter of any child;~~
 - ii. ~~aiding, abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of any child; or~~
 - iii. ~~a felony assault that resulted in serious bodily injury to a child;~~
- e. ~~committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,~~
- d. ~~committed voluntary manslaughter of another child of the parent, or aided or abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or~~
- e. ~~committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent;~~

Comment [DoHS24]: Language has been simplified & clarified that a homicide or serious abuse or neglect of any child can result in TPR.

Comment [DoHS25]: Editor's Note: This entire sub-section #9 is being deleted since it is nearly identical to sub-section # 8.

~~109.~~ A finding in a deprived child action either that

- a. the parent has ~~physically or sexually abused or neglected~~ 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 neglect~~ that is heinous or shocking, ~~to the court,~~
- ~~b. the child or sibling of such child has suffered severe harm or injury as a result of~~
such physical or sexual abuse,

~~10.~~ A finding that the parent has ~~previously physically or sexually abused or neglected~~ 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 neglect~~ and the child or sibling of the child has been subjected to subsequent 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;~~

- ~~d. the child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household where the child resides, by the parent of the child, or~~

- ~~e. the parent has inflicted chronic abuse, chronic neglect or torture subjected the child or a sibling of the child or another child within the household where the child resides;~~

~~11.~~ A finding that the child was conceived as a result of rape ~~perpetrated by the parent whose rights are sought to be terminated or an act committed outside of this state which if committed in this state would constitute rape.~~ This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;

~~12.~~ A finding that all of the following exist:

- a. ~~the child has been adjudicated deprived, and custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and~~
the parent whose rights are sought to be terminated has been is incarcerated, and
- b. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others:
 - i. the duration of incarceration and its detrimental effect on the parent/child relationship;

Comment [DoHS26]: This subsection currently contains multiple grounds for TPR under one paragraph, rather than several "stand alone" sub-sections dealing with each category of harm that gives rise to TPR. Therefore, we have broken these out into several separate sub-sections that will be independent grounds for TPR that are set forth below. No new grounds are being created in this process.

Comment [DoHS27]: Language has been simplified & we have added heinous or shocking neglect to the definitions section.

Comment [DoHS28]: This language is stricken as unnecessary due to language in definitions section of Article 1.

Comment [DoHS29]: This subsection covers the previously abused or neglected child or sibling that is part of the current sub-section 10 & now stands alone. Unnecessary language has been deleted.

Comment [DoHS30]: This subsection is now unnecessary due to the changes made above and to the language contained in the definitions section of Article 1.

Comment [DoHS31]: Language in the sub-section has been modified for consistency & to simplify & clarify.

Comment [DoHS32]: Unnecessary & confusing language has been deleted; language has been added to clarify this TPR ground due to incarceration.

- ii. any previous incarcerations convictions resulting in involuntary confinement in a secure facility;
 - iii. any the parent's history of criminal behavior, including crimes against children;
 - iv. the age of the child;
 - v. ~~the~~ any evidence of abuse or neglect or failure to protect from abuse and neglect of the child or siblings of the child by the parent; and
 - vi. the current relationship between the parent and the child; and,
 - vii. 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 parental rights;

13. A finding that all of the following exist:

- a. ~~the child has been adjudicated deprived; and~~
- a. the parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities within a reasonable time considering the age of the child; and
- b. ~~custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and~~
- b. allowing the parent to have custody would cause the child actual harm or harm in the near future.
- e. ~~the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by Section 6-201 of Title 43A of the Oklahoma Statutes, 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.~~

A parent's refusal or pattern of noncompliance with treatment, therapy, medication or assistance from outside the home can be used as evidence that the parent is

incapable of adequately and appropriately exercising parental rights, duties and responsibilities.

Provided, a A finding that a parent has a mental illness or mental deficiency diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health or substance dependency shall not in and of itself deprive the parent of his or her parental rights;

~~14. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's attention;~~

Comment [DoHS33]: Deleted as unnecessary due to other changes made to this statute

~~15...A child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty two (22) months preceding the filing of the petition. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:~~
~~a. the adjudication date, or~~
~~b. the date that is sixty (60) days after the date on which the child is removed from the home.~~

Comment [C034]: This is being deleted because the federal Adoption Safe Families Act (ASFA) requires that TPR be filed under this amount of time has transpired, absent certain exceptions, but not that it be an independent legal ground for TPR

16. A finding that:

- a. the condition that led to the deprived adjudication has been the subject of a previous deprived adjudication of this child or a sibling of this child; and
- b. the parent has been given an opportunity to correct that conditions which led to the making of the initial deprived child.

Comment [C035]: This TPR ground is new and concerns the circumstance where the subject child or sibling has been previously adjudicated and the parent given an opportunity to correct conditions.

B. An order directing the termination of parental rights is a final appealable order.

C. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

~~D. 1. A petition for termination of parental rights may be filed independently by either the district attorney or the attorney of a child alleged to be or adjudicated deprived.~~

Comment [MAM36]: This section has been moved to the start of the statutes concerning termination of parental rights (7002-3.1).

~~2. A petition for termination of parental rights shall be filed by the district attorney for those petitions required to be filed pursuant to the provisions of Section 7003-4.7 of this title.~~

~~3. If a child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 7003-4.7 of this title, unless an exception to filing exists.~~

§10-7006-1.2. Notice of hearing to terminate parental rights.

Comment [DoHS37]: This section is being deleted here re-written below.

~~A. 1. Prior to the hearing on the application to terminate the rights of a parent or putative father filed pursuant to Section 7006-1.1 of this title, notice of the hearing on the application and a copy of the application shall be served upon the parent or putative father who is the subject of the application in the same manner as summons is served in civil cases, not less than fifteen (15) calendar days prior to the hearing.~~

~~2. The notice shall contain the name of the parent, putative father, or, if the father is unknown, the name of the child, the date of birth of the child, the date of the hearing, and the ground or grounds for which application for termination of parental rights is sought. The notice shall apprise the parent or putative father of the parent's 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 granting of the application for the termination of the parent's or putative father's parental rights and in the child's adoption.~~

~~3. a. If the identity or whereabouts of a parent or putative father are unknown, the court must determine whether the parent or putative father can be identified or located. Following an inquiry pursuant to subsection B of this section, if the court finds that the identity or whereabouts of the parent or putative father cannot be ascertained, and this fact is attested to by affidavit of the other parent, legal guardian or custodian of the child, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last known address of the parent or putative father.~~

~~b. (1) If, in an inquiry pursuant to this section, the woman who gave birth to the child fails to disclose the identity of a possible father or reveal his whereabouts, she must be advised that a subsequent proceeding for adoption may be delayed or subject to challenge if a possible father is not given notice of the proceeding and that the lack of information about the father's medical and genetic history may be detrimental to the child.~~

~~(2) In addition, the willful and deliberate falsification of the sworn affidavit by the parent shall be deemed perjury and shall, upon conviction thereof, be punishable as otherwise provided by law.~~

~~c. The notice shall be published once pursuant to the laws relating to the service of notice by publication in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least fifteen (15) calendar days after the date of publication of the notice. When notice is given by publication, an order terminating parental rights shall not become final for a period of fifteen (15) calendar days from the date of the order.~~

~~4. A parent or putative father may waive such person's right to notice pursuant to this section. The waiver, signed by the parent or putative father, shall include a statement affirming that the person signing the waiver understands that the waiver~~

shall constitute grounds for the termination of the parental rights of the parent or putative father. A putative father may waive his right to notice.

~~B. 1. If, at any time in a proceeding for termination of a relationship of parent and child, the court finds that a parent, an unknown father or putative father of the child may not have received notice, the court shall determine whether he or she can be identified and his or her whereabouts ascertained. The determination must be based on evidence that includes inquiry of appropriate persons in an effort to determine the whereabouts of the parent or identity of an unknown father or putative father for the purpose of providing notice.~~

~~2. The inquiry required by this subsection must include whether:~~

~~a. the woman who gave birth to the child was married at the probable time of conception of the child, or at a later time,~~

~~b. the woman was cohabitating with a man at the probable time of conception of the child,~~

~~c. the woman has received payments or promises of support, other than from a governmental agency, with respect to the child or because of her pregnancy,~~

~~d. the woman has named any individual as the father on the birth certificate of the child or in connection with an application for or receipt of public assistance, and~~

~~e. any individual has formally or informally acknowledged or claimed paternity of the child in a jurisdiction in which the woman resided during or since her pregnancy, or in which the child has resided or resides, at the time of the inquiry.~~

~~3. If inquiry pursuant to the provisions of this subsection identifies as the father or putative father of the child an individual who has not received notice of the proceeding, the court shall require notice to be served upon him pursuant to the provisions of A of this section.~~

~~C. When notice is given by publication pursuant to the provisions of this section, the order terminating parental rights shall contain language in compliance with the requirements of Oklahoma District Court Rule 16.~~

§10-7006-1.2. Notice of hearing to terminate parental rights.

A 1. Prior to a hearing on the petition or motion for termination of parental rights, notice of the date, time and place of the hearing and a copy of the petition or motion to terminate parental rights must be served on the parent who is the subject of the termination proceeding by personal delivery, by certified mail or by publication as provided for in §7003-3.5 XXXXX.

Comment [DoHS38]: This notice section has been re-written for clarification of notice that will issue to a parent and consequences for failure to appear as notified.

2. The notice must contain the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD OR THESE CHILDREN. IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION OR MOTION ATTACHED TO THIS NOTICE".

3. Notice shall be served upon the parent not less than fifteen (15) calendar days prior to the hearing.

4. Any actual notice of termination of parental rights shall state that the duty of the parent to support his or her minor child will not be terminated except for adoption as provided by paragraph 3 of this subsection.

5. The failure of a parent who has been served with notice under this section to personally appear at the hearing shall constitute consent to the termination of parental rights by the parent given notice. When a parent who appears voluntarily or pursuant to notice is directed by the court to personally appear for a subsequent hearing on a specified date, time and location, the failure of that parent to personally appear, or to instruct his or her attorney to proceed in absentia at the trial, shall constitute consent by that parent to the termination of his or her parental rights.

Comment [DoHS39]: This describes the consequences for failure to appear for hearing after being properly recognized back for a subsequent hearing.

B. 1. The court shall have the power to vacate an order terminating parental rights if the parent whose parental rights were terminated pursuant to subparagraph A of this section files a motion to vacate the order within thirty (30) days after the order is filed with the court clerk. Notice of the motion shall be given to all the parties and their attorneys and the court shall set the matter for hearing expeditiously. The burden of proof is on the defaulting parent to show that he or she had no actual notice of the hearing, or due to unavoidable casualty or misfortune, the parent was prevented from either contacting his or her attorney, if any, or from attending the hearing or trial. If the motion to vacate the order terminating parental rights due to a failure to appear is found to have merit, the statutory consent shall be set aside and a new trial conducted.

§10-7006-1.3. Effect of termination of parental rights.

A. The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child and the parent's right to visit the child, the parent's right to control the child's training and education, the necessity for the parent to consent to the adoption of the child, 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.

B. 1. Except for adoptions as provided in paragraph 3 of this subsection, termination of parental rights shall not terminate the duty of either parent to support his or her minor child.

2. Any ~~actual notice of termination of parental rights and order terminating parental rights~~ shall indicate that the duty of the parent to support his or her minor child will not be terminated ~~except for adoption~~ unless the child is subsequently adopted as provided by paragraph 3 of this subsection.

3. Child support orders shall be entered by the court that terminates parental rights and shall remain in effect until the court of termination receives notice from the placing agency that a final decree of adoption has been entered and then issues an order terminating child support and dismissing the case.

§7003-5.5(1)(3) – STAND ALONE SECTION: Department’s authority to place and consent to adoption

If the court terminates the rights of a parent and places the child with 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 places the child with the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning such child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate upon final decree of adoption.

Comment [DoHS41]: Editor's Note: The Committee consensus was to move this section as a stand alone statute from 10 O.S. §7003-5.5(1)(3) to the TPR Article.

NEW LAW: Status of parent & child when rights are not terminated at trial

A. When parental rights are not terminated as a result of a trial, the court shall set the matter for a permanency hearing within thirty (30) days.

Comment [CO42]: This added language is to clarify the status of the parties in the event TPR does not succeed & that a permanency hearing is to occur.

B. The failure of parental rights being terminated at trial shall not deprive the court of its continuing jurisdiction over the child nor shall it require reunification of the child with the parent if the child has been adjudicated to be deprived.

§10-7006-1.4. Custody with authority to consent to adoption after termination of parental rights.

~~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. A court shall not 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.~~

Comment [DoHS43]: This section is deleted because it is in conflict with language in the disposition statutes.

§10-7006-1.5. 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 shall 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 Section 7505-4.2 of this title.~~

Comment [DoHS44]: Deleted because this section is unnecessary.

§10-7006-1.6. Deprived children in custody 15 of last 22 months.

~~A. The Department of Human Services shall identify those adjudicated deprived children who have been in the Department's custody for fifteen (15) of the most recent twenty two (22) months, and who were in out-of-home placement in the Department's custody as of November 17, 1997. The Department shall develop and provide to district attorneys a listing of those cases for which a petition for termination of parental rights should be filed.~~

~~B. The Department of Human Services shall provide to the State Postadjudication Review Advisory Board a listing of those cases identified in subsection A of this section and a listing of those cases for which the Department has determined that a petition to terminate parental rights is not required based upon the following:~~

- ~~1. The child is being cared for by a relative;~~
- ~~2. The Department has compelling reasons for determining such a filing of termination of parental rights would not be in the best interests of the child; or~~
- ~~3. The state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state may deem necessary for the~~

Comment [CO45]: This entire section can be deleted because it an ASFA requirement that has been met.

~~safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child.~~

~~C. 1. The State Postadjudication Review Advisory Board shall disseminate the listings from the Department of Human Services to local postadjudication review boards for review. In the event that no local postadjudication review board exists, it shall be the responsibility of the State Postadjudication Review Advisory Board to provide the means to implement the provisions of subsection B of this section.~~

~~2. In those cases where the local postadjudication review boards or the Board disagree with the Department's determinations, the local postadjudication review boards or Board shall provide to district attorneys their recommendations of additional cases for which a petition to terminate parental rights should be filed. The Board shall forward a copy of such recommendations to the Department of Human Services.~~

~~D. The Department and district attorneys shall utilize the following timetable for purposes of filing petitions for termination pursuant to this section:~~

~~1. Within six (6) months after the end of the 2nd regular Session of the 46th Legislature, not less than one third (1/3) of such cases shall be referred, giving priority to children for whom the permanency plan is adoption and to children who have been in foster care for the greatest length of time;~~

~~2. Within twelve (12) months after the end of such 2nd regular Session, not less than two thirds (2/3) of such cases shall be referred; and~~

~~3. Within eighteen (18) months after the end of such 2nd regular Session, all of such cases shall be referred.~~

~~E. The Department of Human Services shall provide to the local postadjudication review boards or the State Postadjudication Review Advisory Board any information necessary to effectuate the provisions of this section.~~

§ _____ NEW LAW: Reinstatement of parental rights

A. 1 A child may, by application, request the court to reinstate the previously

terminated parental rights of his or her parent under the following circumstances:

a. The child was previously found to be a deprived child;

b. The child's parent's rights were terminated in a proceeding under this chapter;

c. The child has not achieved his or her permanency plan within three (3) years of a final order of termination; and

d. The child must be at least fifteen (15) years old at the time the application is filed.

2. A child must be represented during the proceeding and shall be provided independent counsel.
3. The application must be signed by the child as well as the child's attorney.
4. If, after a preliminary hearing to consider the parent's apparent fitness and interest in reinstatement of parental rights, the court finds by a preponderance of the evidence that the best interests of the child may be served by reinstatement of parental rights, the court shall order that a hearing on the merits of the motion be held.
5. The court shall cause prior notice to be given to the Department, the child's attorney, and the child. The court shall also order the Department or the child's attorney to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the application, the child's current foster parent, relative guardian, the child's guardian ad litem, and the child's tribe, if applicable.
6. The child's application shall be dismissed if the parent cannot be located.
7. The court shall conditionally grant the motion if it finds by clear and convincing evidence that the child has not and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:
 - a. Whether the parent whose rights are to be reinstated is a fit parent and has remedied the conditions as provided in the record of the prior termination proceedings and prior termination order;

b. The age and maturity of the child, and the ability of the child to express his or her preference;

c. Whether the reinstatement of parental rights will present a risk to the child's health, safety or welfare; and

d. Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

8. In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to imminently achieve his or her permanency plan, the Department shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

9. a. If the court conditionally grants the motion under subsection seven (7) of this section, the case shall be continued for six (6) months and a temporary order of reinstatement entered. During this period, the child shall be placed in the custody of the parent. The Department shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide or ensure that transition services are provided to the family as appropriate.

b. If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the application for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

10. The court shall hold a hearing after the child has been placed with the parent for six months. If the placement with the parent has been successful, the court shall enter a final order of reinstatement of parental rights, which shall restore all rights,

powers, privileges, immunities, duties, and obligations of the parent to the child, including those relating to custody, control, and support of the child. The court shall close the deprived action and direct the court clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

11. A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child and acknowledges that the conditions of the parent and child have changed since the time of the termination of parental rights and that reunification is now appropriate.

12. This section is retroactive shall apply to any child who is under the jurisdiction of the district court as a deprived child at the time of the hearing to reinstate parental rights regardless of the date when parental rights were terminated.

13. The state, the Department, and its employees are not liable for civil damages resulting from any act or omission in providing services under this section, unless the act or omission constitutes gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists. This section does not create a cause of action against the state, the Department, or its employees concerning the original order of termination of parental rights.

OKLAHOMA CHILDREN'S CODE

ARTICLE 5 – APPEALS

§ 7003-6.2. Appeals

Comment [DoHS1]: Parts A & B are retained & are necessary instruction for appeals from District Court to Supreme Court. Subsection "C" as amended has been moved to Article 4, Part 8 – Post Dispo & Misc. Hrgs.

A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court pursuant to Section 7003-6.4 of this title and the rules of the Supreme Court of this state.

B. The pendency of an appeal thus taken shall not suspend the order of the district court regarding a child, nor shall it remove 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, except as provided in subsection C of this Section XXXX of this title. 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.

Comment [DoHS2]: Editor's Note: Reference is to the new number assigned to this now stand alone section on internal appeals.

~~C. 1. If the court determines it would be in the best interests of a child, the court may place the child in the legal custody of the Department of Human Services. If the child is placed in the custody of the Department, the court may not direct the Department to place the child in a specific home or placement.~~

~~2. At any hearing including, but not limited to, hearings conducted pursuant to Section 7003-8.6 of this title, where it is determined that a child in state custody will be released from state custody, the district attorney or the attorney for the child may give verbal notice to the court of an objection to the order of the court and an intention to seek review of that order based on the grounds that the order of the court releasing the child from state custody creates a serious risk of danger to the health or safety of the child.~~

~~3. Upon giving such notice, the court issuing the custody order in question shall stay the custody order filing of an application and completion of review as provided in this section. The district attorney or attorney for the child shall file with the presiding judge of the administrative judicial district a written application for review within three (3) judicial days from the custody order. If a written application for review is not filed within such time period, or if a written notice to the trial court withdrawing the objection is filed within that time period, the objection will be deemed abandoned and the stay shall be lifted.~~

4. ~~Each application for review shall be assigned by the presiding judge of the administrative judicial district to a judge within that administrative judicial district with juvenile docket responsibilities. The review shall be completed within five (5) judicial days of the filing of the written application for review. The review conducted by the reviewing judge shall address the question of whether releasing the child from state custody creates a serious risk of danger to the health or safety of the child. The reviewing court shall review the record of the hearing and any other evidence deemed relevant by the reviewing court. At the conclusion of the review, the reviewing court shall issue its findings of fact and conclusions of law and report them to the court issuing the custody order under review.~~

5. ~~A finding by the reviewing court that the order releasing the child from state custody creates a serious risk of danger to the health or safety of the child shall be controlling and the court issuing the order under review shall proceed to enter a different custody order. If the reviewing court finds that the order under review does not create a serious risk of danger to the health or safety of the child and that the order is otherwise appropriate then the court issuing the order under review shall lift the stay and the order shall be subject to appeal as provided in subsection A of this section. The failure of any court to issue the stay mandated by this subsection shall be subject to immediate mandamus to an appropriate court.~~

Section 7003-6.3 – Use of initial for child’s surname

~~In the published opinions of the appellate courts of this state in proceedings including, but not limited to, deprived, adoption, and paternity proceedings and other proceedings under this Code Title, the initial of the child's surname shall be used rather than the name of the child.~~

Comment [DoHS3]: Editor's Note: Clarifying that in all appeals under Title 10 the child's initials will be used rather than the child's name.

Section 7003-6.4 – Time for filing petition; Completion of record; Briefing schedule

A. All appeals of cases involving deprived or allegedly deprived children including termination of parental rights 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.

Comment [DoHS4]: Amended to establish a time frame for a decision on an appeal. The best interests of the child dictates that appeals be decided on a priority & expedited basis.

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

4C.1. Adjudication of the appeals described in this section shall be expedited by the Supreme Court and a decision shall be rendered on a priority basis in all cases.

2. The term "priority basis" as used in this section means that a decision shall be filed within six (6) months from the date the briefing is completed.

OKLAHOMA CHILDREN'S CODE

ARTICLE 6 – CHILDREN'S RECORDS

§10-7005-1.1. Court to make and keep records - Definitions.

A. The court shall make and keep records of all cases brought before it. The court shall may devise and cause to be printed ~~such~~ forms for ~~social and legal~~ records and such other papers as may be required.

Comment [CO1]: Clean-up.

B. As used in the Oklahoma Children's Code:

1. "Records" shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recordings, and shall include information entered into and maintained in an automated or computerized information system;

2. "Juvenile court record" means ~~legal and social~~ all records other than adoption records, including but not limited to agency, law enforcement and district attorney's records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the provisions of the Oklahoma Children's Code;

Comment [CO2]: Clean-up.

3. "Agency record" means records prepared, obtained or maintained by a public or private agency with regard to a child who is or has been under its care, custody or supervision or to a family member or other person living in the home of such child and shall include but not be limited to:

a. any study, plan, recommendation, assessment or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care or treatment of such child, or

~~b. any records made in the course of any investigation or inquiry conducted by an agency to determine whether a child is or may be a deprived child, a delinquent child, a child in need of supervision or a child in need of treatment~~ safety analysis records that have been prepared and obtained in response to a report of alleged child abuse or neglect and will include assessment reports and reports to district attorney with all supporting documentation attached, and any addendums.

Comment [DoHS3]: Editor's Note: Agency records modified for consistency with the definitions in Article 1 on assessments & investigations (safety analysis records) & the new practice model being implemented by DHS.

4. "District attorney's records" means any records prepared or obtained by an office of a district attorney relating to juvenile cases and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child as defined by this section;

5. "Law enforcement records" means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this title as a deprived child, ~~a delinquent child,~~ a child in need of supervision or a child minor in need of

Comment [DoHS4]: Language clean up.

treatment. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. "Nondirectory education records" means any records maintained by a public or private school, including a technology center school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to ~~the federal Family Educational Rights and state law and Privacy Act of 1974 and any rules promulgated pursuant to said act;~~

Comment [DoHS5]: Language clean-up.

7. "Legal record" means any petition, docket, motion, finding, order, judgment, pleading, paper or other document, other than social records, filed with the court;

8. "Social record" means all records and reports considered closed or

Comment [DoHS6]: The added language is for protection of information required to be kept confidential pursuant to federal law

confidential by law, including but not limited to social studies and family social

histories, medical reports, psychological and psychiatric evaluations or

assessments, clinical or other treatment reports ~~or studies~~, educational records,

home studies, and agency records concerning a child or the child's family, even if

attached to court reports prepared by the Department other than legal records.

9. "Participating agency" means any public or private agency that has entered into a contract or an interagency agreement under the Interlocal Cooperation Act in accordance with the rules and guidelines adopted pursuant to Section 620.6 of this title for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth.

§7005-1.2. Confidential records.

A. Except as provided by this section and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

B. The limitation of subsection A of this section shall not apply to statistical information and other abstract information obtained pursuant to the provisions of the Oklahoma Children's Code.

C. ~~Except as authorized by Section 620.6 of this title and this article and except as otherwise specifically provided by state and federal laws pertaining to the confidentiality of records and information and the inspection, release, disclosure, correction or expungement of such information, including, but not limited to, state and federal laws pertaining to education records, medical records, drug or~~

Comment [DoHS7]: Unnecessary verbiage deleted. Clarification that subpoenas for records or testimony are invalid.

alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court. ~~Except as otherwise provided in Section 601.6 of this title, no~~ A subpoena or subpoena duces tecum purporting to compel testimony or disclosure of such information or record shall be ~~valid~~ invalid.

D. 1. In a proceeding where child custody or visitation is at issue, the Department's safety analysis records shall be produced to the court when a parent, legal guardian or child who is the subject of such record obtains a court order directing the production of such records.

Comment [DoHSS]: New law streamlining the procedure to obtain safety analysis records when child custody or visitation is at issue.

2. The person or party seeking the records shall proceed by filing a motion for production of safety analysis records which contains the following averments:

a. The movant is a parent, legal guardian or child who is the subject of the safety analysis records;

b. Child custody or visitation is at issue;

c. That upon receipt from the court, the safety analysis records will be kept confidential and disclosed only to the movant; the movant's attorneys and those persons employed by or acting on behalf of the movant and the movant's attorneys whose aid is necessary to the prosecution or defense of the child custody or visitation issue; and,

d. That a copy of the motion is being provided to the parties, the child's attorney, if any, and the guardian *ad litem*, if any.

3. Upon filing the motion for production of safety analysis records, the court may, in its discretion, enter an *ex-parte* order for production of safety analysis records that shall be in substantially the following form:

CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

NOW on this _____ day of _____, 20____, the court finds that child custody or visitation is at issue in the above styled and numbered proceeding and the disclosure of the safety analysis records of the Oklahoma Department of Human Services pursuant to 10 O.S. ~~§7005-1.2~~ XXXXXX is necessary and relevant to the court's determination of the child's best interests. The court therefore orders as follows:

Comment [DoHSS9]: A protective order is entered and presented to the Department before records are released to the court.

1. The Oklahoma Department of Human Services ["Department" or "DHS"] shall produce a copy of its safety analysis records to this court on or before _____ day of _____, 20____

2. The Department shall be permitted to redact or omit information in its safety analysis records which may identify the reporter of alleged child abuse or neglect.

3. All information contained in the Department's safety analysis records is confidential under Oklahoma law and shall be disclosed only to the parties, the parties' attorneys and those

persons employed by or acting on behalf of the parties and the parties' attorneys whose aid is necessary to the prosecution or defense of the child custody or visitation issue.

4. No confidential information whether contained in pleadings, briefs, discovery or other documents shall be filed except under seal with the legend "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS SUBJECT TO A PROTECTIVE ORDER OF THE COURT".

5. No person or entity shall utilize any information contained in the safety analysis records for any purpose other than the prosecution or defense of the child custody or visitation issues in this case.

6. The release by counsel or any other person for any reason of identifiers such as social security or tax ID numbers that may be contained in the DHS records and which belong to any person or entity is strictly prohibited.

7. Any violation of this order shall be subject to prosecution for contempt of court.

IT IS SO ORDERED this _____ day of _____, 20_____.

4. This sub-section shall not apply to:

- a. Deprived child proceedings brought pursuant to the Oklahoma Children's Code;
- b. Discovery of safety analysis records by a person or entity who is not the subject of those records; or,
- c. Discovery of safety analysis records in criminal, other civil or administrative proceedings.

5. The party who has obtained a court order for the Department's safety analysis records shall provide the Department with the names and other identifying information concerning the subjects of the safety analysis records.

6. Upon receipt of a court order to produce its safety analysis records, the Department shall be given a minimum of five (5) judicial days to deliver the records to the court.

7. The safety analysis records provided by the Department to the court pursuant to this sub-section shall not be subject to judicial review and shall be released by the court only to the litigants in the case under a protective order.

8. A court order entered pursuant to this sub-section which purports to require the Department to produce all agency records shall be deemed to require only the production of the Department's safety analysis records.

9. An employee of the Department shall not be compelled to testify about the safety analysis records except upon a court order directing such testimony. Any

Comment [DoHS10]: Clarifies that the rules under this section do not apply to deprived cases or records discovery sought in other civil or criminal cases.
Approved 06-13-08
Also the rules in this section do not apply when the party seeking the records is not the subject of the records.

Comment [DoHS11]: Identifying information concerning the subjects of the records is to be provided to the Department & not be contained in the court order.

Comment [DoHS12]: The time frame for the Department to produce its records is expanded to 5 judicial days.

Comment [DoHS13]: The DHS records are produced to the court are not subject to judicial review & are released by the court to the litigants under the protective order previously issued.

Comment [DoHS14]: Blanket court orders for "all records" will be deemed to require production of only investigative records.

Comment [DoHS15]: Testimony about the investigative records will still require a court order.

subpoena or subpoena duces tecum purporting to compel disclosure of safety analysis records or testimony concerning such records without a court order shall be invalid.

10. Except as provided by this sub-section or other law, confidential records may be inspected, released, disclosed, corrected or expunged only by the procedure set forth in sub-section E of this section.

E. An ~~When confidential records may be relevant in a criminal, civil or administrative proceeding, an order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a judicial review of the records and a determination by a judge of the district court designated pursuant to this subsection, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest of necessity pursuant to the following procedure:~~

~~1. Except for district attorney's records, any order authorizing the disclosure, release or inspection of such records pursuant to this subsection may be conditioned on such terms and restrictions as the court deems necessary and appropriate. A petition or motion shall be filed with the court describing with specificity the confidential records being sought and setting forth in detail the compelling reason why the inspection, release, disclosure, correction or expungement of confidential records should be ordered by the court. A motion that does not contain the required specificity or detail may be subject to dismissal by the court.~~

~~2. Upon the filing of a petition for an order of the court pursuant to this section, the petition or motion the court shall set a date for a hearing and shall provide three (3) days' require notice of not less than twenty (20) days to the agency or person holding the records and the person who is the subject of the record if such person is eighteen (18) years of age or older or to the parents of a child less than eighteen (18) years of age who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The hearing may be closed at the court's discretion. The court may also enter an *ex parte* order compelling the person or agency holding the records to either produce the records to the court on or before the date set for hearing or file an objection or appear for the hearing. The court may shorten the time allowed for notice due to exigent circumstances.~~

~~3. Upon the filing of a petition for an order of the court pursuant to this section, the judge of the court having jurisdiction to issue the order authorized by this section shall request the presiding judge of the judicial district to designate another judge to review the confidential records and make a determination as to whether any information contained in the records may be inspected, released, disclosed, corrected or expunged. Any order issued by the judge of the court having jurisdiction to issue such order shall be based on and consistent with the determination of the judge reviewing the confidential records. At the hearing, should the court find a~~

Comment [DoHS16]: The production of all confidential records, except for safety analysis records as provided for in sub-section D, may be compelled pursuant to the rules set forth in sub-section E.

Comment [DoHS17]: This sub-section provides the process to obtain confidential records when sub-section D is not applicable. This sub-section E process is what has been in effect for many years. However, changes were made allowing for longer time frames to produce records; establishing fees to pay for costs of copies; establishing waiver of costs when a party is indigent and can demonstrate the need for the records.

Comment [DoHS18]: A judicial review & determination of necessity will be required before records can be disclosed.

Comment [DoHS19]: A motion for disclosure of records is filed, rather than a petition (unless a records proceeding is an independent action), that must set forth compelling reasons in detail on why the records are being sought.

Comment [DoHS20]: 20 days advance notice is required to the agency or persons who are holding the records or who are the subjects of the records which is more realistic & which is common in civil or criminal cases; time frame can be shortened due to exigent circumstances.

Comment [DoHS21]: Agencies holding records are subject to an *ex parte* order that directs production of the records (if no objection by agency to the order) or for an objection to be filed or appearance at the pre-set records hearing.

Comment [DoHS22]: The purpose of the records hearing is to determine if there is a compelling reason for the records to be judicially reviewed for purposes of disclosure.

compelling reason does not exist for the confidential records to be judicially reviewed, the matter shall be dismissed, otherwise, the court shall order that the records be produced for a judicial review. The hearing may be closed at the court's discretion.

4. The judicial review of the records shall include a determination, with due regard for the confidentiality of the records and the privacy of persons identified in the records, as to whether an order should be entered authorizing the inspection, release, disclosure, correction or expungement of the records based upon the need for the protection of a legitimate public or private interest.

~~E.F. Any agency or person may seek an order from the juvenile court prohibiting the release of information subject to disclosure without an order of the court pursuant to Section 620.6 of this title and this article. The court may, for good cause shown, prohibit the release of such confidential records or information testimony or authorize a release of the confidential information or testimony upon such conditions as the court deems necessary and appropriate, subject to the provisions of subsection D of this section.~~

~~F.G. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and state specifically the type of information which may be reviewed. Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of children, parents and such other persons required by the court to be confidential will remain confidential. Any public or private agency, entity or professional person required to produce confidential records pursuant to this section may require payment of fees from the party seeking the records prior to any records being produced, including a research fee not exceeding twenty dollars (\$20.00) per hour and a copy fee not to exceed fifty cents (\$0.50) per page and five dollars (\$5.00) per copy of each video tape or disk, provided, the court may waive such costs in a criminal action based upon indigence of a defendant. The Department shall not be permitted to assess fees for records produced pursuant to sub-section D of this section.~~

G.H. Nothing in Section 620.6 of this title and this article shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;
2. Authorizing the disclosure of papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the provisions of the Oklahoma Adoption Code;
3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

Comment [CO23]: Committee decided the judicial review of the confidential records does not need to be done by a judge who is not the trial judge.

Comment [DoHS24]: The judicial review includes a determination of whether the disclosure of the records meets the test for protection of a legitimate public or private interest taking into account the privacy interests of the persons identified in the records.

Comment [DoHS25]: The court may decide to not release records or to release them under conditions (such as a protective order).

Comment [DoHS26]: New law allowing search & copy fees. However, this will not apply to production of investigative records pursuant to sub-section D.

4. Limiting or otherwise affecting access of parties to a deprived proceeding to records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review, or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;

6. Prohibiting the Department of Human Services from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect or to any person providing services to a child who is or is alleged to be a victim of child abuse;

~~7. Authorizing the disclosure of the identity or location information of information which identifies any person who has reported an allegation of known or suspected child abuse or neglect unless such disclosure is specifically ordered by the court; or~~

Comment [DoHS27]: Language clean-up.

8. Prohibiting the Department of Human Services from providing a summary of allegations and findings of an investigation involving a child care facility that does not disclose identities but that permits parents to evaluate the facility; or

~~9. Prohibiting the disclosure of confidential information to any educational institution, facility or educator to the extent necessary to enable the educator to better provide educational services and activities for a child and provide for safety of students.~~

Comment [DoHS28]: This paragraph is added here for school access to records in lieu of subsection H which is deleted.

~~10. Prohibiting the Department from obtaining without a court order non-directory~~

Comment [DoHS29]: This new sub-part allows DHS to get a child's school records when the child is in legal custody of DHS.

education records pertaining to a child in the Department's legal custody.

~~H. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district, or as otherwise required to be provided by the Department pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the agency in possession of the records shall provide the requested information to the school district. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.~~

Comment [DoHS30]: Deleted. See above-comment.

§10-7005-1.3. Inspection of confidential Juvenile Court and Department of Human Services records without court order - Penalties for unlawful disclosure.

A. Juvenile court records and Department of Human Services agency records pertaining to a child may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

Comment [CO31]: The committee decided to combine into one section those common sections allowing disclosure of juvenile court and DHS records w/o a court order.

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and court-appointed special advocates;

~~2. Employees of court appointed special advocate programs, as defined in Section 7001-1.3 of this title, in the course of their official duties pertaining to recruiting, screening, training, assigning cases, supervising and supporting volunteers in their roles as guardian ad litem, pursuant to Section 7003-3.7 of this title;~~

Comment [CO32]: Moved to separate paragraph B.

~~3. Members of postadjudication review boards established pursuant to the provisions of Section 1116.2 of this title, the Child Death Review Board, and multidisciplinary personnel. In addition to juvenile court records, members of such postadjudication review boards may inspect, without a court order, information that includes, but is not limited to:~~

- ~~a. — psychological and medical records,~~
- ~~b. — placement history and information, including the names and addresses of foster parents,~~
- ~~c. — family assessments,~~
- ~~d. — treatment or service plans, and~~
- ~~e. — school records;~~

4. A district attorney, United States Attorney, or Attorney General of this or another state and the employees of such offices in the course of their official duties pursuant to this title or the prosecution of crimes against children, or upon their request in their official capacity as advisor in a grand jury proceeding;

5. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or other proceeding where child custody or visitation is at issue; including the attorney representing a child pursuant to the provisions

Comment [DoHS33]: Language clean-up & clarification that the child's attorney can access confidential records.

of subsection C of Section 7002-1.2 of this title or representing a child pursuant to the provisions of subsection A of Section 7112 of this title. Such attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;

6. Employees of juvenile bureaus in the course of their official duties pursuant to this title, and employees of the Department of Human Services in the course of their official duties;

~~7.~~ 7. Employees of a law enforcement agency of this or another state or military enclave and employees of a child protective service of another state or military enclave in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

Comment [DoHS34]: Language clean-up.

~~8.~~ 8. Persons and agencies authorized by Section 7005-1.7 of this title;

Comment [DoHS35]: Stricken because §7005-1.7 has been deleted as unnecessary.

9. ~~8.~~ The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

~~10.~~ ~~9.~~ The Department of Human Services or other public or private agency or individual having court-ordered custody or custody pursuant to Department of Human Services placement of the child who is the subject of the record;

Comment [CO36]: Moved to separate paragraph B.

11. ~~10.~~ The Office of Juvenile Affairs;

~~12.~~ ~~11.~~ The child who is the subject of the record and the parents, legal guardian, custodian or foster parent of such child;

Comment [CO37]: Moved to separate paragraph B.

~~13.~~ 12. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an Indian tribe pursuant to the provisions of the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act; provided such Indian tribe, in the course of its official duties, is:

Comment [CO38]: Same as 7005-1.5 that can now be deleted.

- a. investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody,
- b. providing services to or for the benefit of a child including, but not limited to, protective, emergency, social and medical services, or

c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes under this subsection shall include all case records, reports, and documents as defined in Section 7005-1.1 of this title;

44. ~~13.~~ The Governor or to any person the Governor designates, in writing;

45. ~~14.~~ Any federal official of the United States Department of Health and Human Services;

46. ~~15.~~ Any member of the Legislature approved in writing by the Speaker of the House of Representatives or the President Pro Tempore of the Senate;

~~17. Persons authorized by and in the manner provided in the Oklahoma Child Abuse Reporting and Prevention Act;~~

Comment [DoHS39]: Deleted because OCARPA has been merged with the OCC.

48. ~~16.~~ A foster parent, with regard to records concerning the social, medical, psychological or educational needs of a child currently placed with that foster parent or of a child being considered for placement with that foster parent;

49. ~~17.~~ An employee of any state or federal corrections or law enforcement agency in the performance of such employee's official duties concerning presentence investigations or supervision of a parent of an alleged or adjudicated deprived child, or the legal guardian, custodian or any other adult member of the child's home who is responsible for the health, safety or welfare of the child; and,

20. ~~18.~~ An employee of a state agency of this or another state in the performance of such employee's official duties concerning the establishment of paternity or the establishment or enforcement of a child support order or other entitlement for the benefit of a child; provided, disclosure shall be limited to information directly related to the purpose of such disclosure. ~~and~~

~~19. A person authorized by the court to conduct bona fide research, provided such research may not publish the names or identities of parents, children or other persons contained in the records.~~

Comment [DoHS40]: Added to allow for research w/o publishing identities.

Comment [CO41]: Moved to separate paragraph B.

Comment [C042]: Sub-section B provides for disclosure of juvenile court records that are not in common with disclosure of the records listed in sub-section A.

B. In addition to the persons named in sub-section A of this section, juvenile court records may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

1. Employees of court-appointed special advocate programs, as defined in Section 7001-1.3 of this title, in the course of their official duties pertaining to recruiting, screening, training, assigning cases, supervising and supporting volunteers in their roles as guardian ad litem, pursuant to Section 7003-3.7 of this title;

2. Members of postadjudication review boards established pursuant to the provisions of Section 1116.2 of this title, the Child Death Review Board, and multidisciplinary personnel. In addition to juvenile court records, members of such postadjudication review boards may inspect, without a court order, information that includes, but is not limited to:

a. psychological and medical records,

b. placement history and information, including the names and addresses of foster parents,

c. family assessments,

d. treatment or service plans, and

e. school records;

3. The Department of Human Services or other public or private agency or individual having court-ordered custody or physical custody pursuant to

Department of Human Services placement of the child who is the subject of the record;

4. The child who is the subject of the record and the parents, legal guardian, custodian or foster parent of such child;

5. A person authorized by the court to conduct bona fide research, provided such research may not publish the names or identities of parents, children or other persons contained in the records.

Comment [DoHS43]: Added to allow for research w/o publishing identities.

C. In addition to the persons and entities named in sub-section A of this section, Department of Human Services agency records may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

Comment [CO44]: Sub-section C concerns disclosure of DHS agency records w/o a court order that are not in common with disclosure of records listed in sub-section A.

1. Postadjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;

2. Any district court which has ordered a home study by the Department in an action for divorce, annulment, custody of a child, or appointment of a legal guardian of a child, or any subsequent proceeding in such actions; provided,

however, the Department may limit disclosure in the home study to summaries or to information directly related to the purpose of such disclosure;

Comment [MAM45]: We need to add the limitation for the Department's disclosure

Comment [DoHS46]: Editor's Note: Limiting text from statute inserted.

3. Members of multidisciplinary teams or multidisciplinary personnel designated by the Department of Human Services, investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of the report;

4. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, legal guardian, foster parent, custodian or other family members;
5. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of child abuse or neglect, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;
6. Any person or agency for research purposes, if all of the following conditions are met:
- a. the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;
7. The Oklahoma Health Care Authority; and,
8. A medical examiner when such person is determining the cause of death of a child.

BD. In accordance with the rules promulgated for such purpose pursuant to Section 620.6 of this title, records listed in subsection A of Section 7005-1.2 of this title may be inspected and their contents disclosed without a court order to participating agencies.

NEW LAW: Records Including More Than One Child

Comment [DoHS47]: This new law allows the court to control disclosure of information when more than 1 child is the subject of the record.

Where more than one child is included in a juvenile court record, the court may order the names and information of the other children redacted as a condition of granting access or copies of the record. Alternatively, the court may prohibit disclosure of the record where redaction is not practical or possible.

~~C. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for commercial, political or any other unauthorized purpose.~~

Comment [DoHS48]: Editor's Note: Confidentiality section is being moved to a stand alone section at the end of this Article.

§10-7005-1.4. Disclosure of Department of Human Services records without court order – Confidentiality – Violations.

Comment [CO49]: Editor's Note: This section has been consolidated with the section that now deals with disclosure of both juvenile court records and Department records, avoiding needless repetition of common records that can be disclosed w/o a court order..

~~A. Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:~~

- ~~1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, postadjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;~~
- ~~2. Any district court which has ordered a home study by the Department in an action for divorce, annulment, custody of a child, or appointment of a legal guardian of a child, or any subsequent proceeding in such actions; provided, however, the Department may limit disclosure in the home study to summaries or to information directly related to the purpose of such disclosure;~~
- ~~3. A district attorney, United States Attorney or Attorney General of this or another state and the employees of such offices in the course of their official duties pursuant to this title or the prosecution of crimes against children or upon their request in their official capacity as advisor in a grand jury proceeding;~~

4. ~~The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or other proceeding where child custody or visitation is at issue; including the attorney representing a child pursuant to the provisions of subsection C of Section 7002-1.2 of this title or representing a child pursuant to the laws relating to child abuse and neglect. Such attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;~~
5. ~~Employees of juvenile bureaus in the course of their official duties;~~
6. ~~Employees of a law enforcement agency of this or another state or military enclave and employees of a child protective service agency of another state, military enclave or federally recognized Indian tribe in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;~~
7. ~~The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;~~
8. ~~The Office of Juvenile Affairs;~~
9. ~~Persons and agencies authorized by Section 7005-1.7 of this title;~~
10. ~~Members of multidisciplinary teams or multidisciplinary personnel designated by the Department of Human Services, investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of the report;~~
11. ~~A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, legal guardian, foster parent, custodian or other family members;~~
12. ~~Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of child abuse or neglect, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;~~
13. ~~Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;~~
14. ~~A parent, legal guardian or custodian of the child who is the subject of such records; provided, that records disclosed shall be limited to juvenile court records as defined by Section 7005-1.1 of this title. All other agency records pertaining to or related to any alleged or adjudicated abuse or neglect of the child shall not be inspected or disclosed pursuant to this paragraph;~~
15. ~~14.~~ Any person or agency for research purposes, if all of the following conditions are met:
 - a. ~~the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and~~
 - b. ~~the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access~~

~~to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;~~

~~16. Persons authorized by and in the manner provided in the Oklahoma Child Abuse Prevention and Reporting Act;~~

~~17. 15. A foster parent, with regard to records concerning the social, medical, psychological or educational needs of a child currently placed with that foster parent or of a child being considered for placement with that foster parent;~~

~~18. 16. The Governor or to any person the Governor designates, in writing;~~

~~19. 17. Any federal official of the United States Department of Health and Human Services;~~

~~20. 18. The Oklahoma Health Care Authority;~~

~~21. 19. Any member of the Legislature approved in writing by the Speaker of the House of Representatives or the President Pro Tempore of the Senate;~~

~~22. 20. Any person or agency authorized to receive any paper, record, book or other information pursuant to the Oklahoma Adoption Code pertaining to a child who is the subject of an adoption proceeding or relatives who are related to such child within the third degree of consanguinity;~~

~~23. 21. Employees of any state or federal corrections or law enforcement agency in the performance of their official duties concerning presentence investigations or supervision of a parent of an alleged or adjudicated deprived child or the legal guardian, custodian or any other adult member of the child's home who is responsible for the care of the child; and~~

~~24. 22. An employee of a state agency of this or another state in the performance of such employee's official duties concerning the establishment of paternity or the establishment or enforcement of a child support order or other entitlement for the benefit of a child; provided, the Department shall limit disclosure to information directly related to the purpose of such disclosure;~~

~~23. A medical examiner when such person is determining the cause of death of a child; and.~~

~~B. In accordance with the rules promulgated for such purpose pursuant to the provisions of Section 620.6 of this title, records may be inspected and their contents disclosed without a court order to participating agencies.~~

~~C. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment, protection or supervision of a child alleged to be abused or neglected.~~

~~D. Records and their contents disclosed pursuant to this section shall remain confidential and information authorized to be disclosed pursuant to this section shall not contain information which identifies a reporter of alleged or known child abuse. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.~~

~~§10-7005-1.5. Department of Human Services records – Release to Indian tribes.~~

~~Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed and released without a court order to a federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act, Section 40 et seq. of Title 10 of the Oklahoma Statutes; provided such Indian tribe, in the course of its official duties, is:~~

- ~~a. — investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody, or~~
- ~~b. — providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services, or~~
- ~~c. — the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.~~

~~The records that are to be provided to Indian tribes under this section shall include all case records, reports, and documents as defined in Section 7005-1.1 of this title.~~

Comment [DoHS50]: Editors' Note:
See above comment

~~§10-7005-1.7. Promulgation of rules implementing federal Child Abuse Prevention and Treatment Act.~~

~~A. Pursuant to the provisions of the federal Child Abuse Prevention and Treatment Act which provides for expanded disclosure and sharing of records and reports with persons and entities who have a reason for the records and reports to protect children from child abuse, the Commission for Human Services shall promulgate emergency and permanent rules which will provide for disclosure of all information to persons and entities authorized by this article, the Child Abuse Reporting and Prevention Act, the Oklahoma Foster Care and Out-of-Home Placement Act, and any other person or entity specifically authorized by law in order to carry out their responsibilities under law to provide services to children and to protect children from abuse and neglect. Rules shall provide for the disclosure of all relevant information concerning reports of child abuse and neglect to the persons or entities authorized by law to receive such information.~~

~~B. The State of Oklahoma declares that the receipt of confidential information by persons authorized to receive confidential information relating to children, pursuant to the provisions of subsection A of this section, is essential to the responsibility of the state to care for and protect its children.~~

Comment [DoHS51]: Entire section deleted as unnecessary.

§10-7109. Disclosure of information - Transmission of records.

~~A. The Department of Human Services may provide information to a person or agency that provides professional services such as medical examination of or therapeutic intervention with a victim of abuse or neglect. This information may include, but is not limited to:~~

- ~~1. The investigative determination; or~~
- ~~2. The services offered and provided.~~

~~B. The Department shall forward to any hospital or any physician, including, but not limited to, doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, reporting the abuse or neglect of a child pursuant to Section 7103 of this title, information including the investigative determination, the services offered or provided, and such other information deemed necessary by the Department. Such information shall be entered and maintained in the child's medical records.~~

~~C. 1. The Department of Human Services shall forward to the school principal of the school in which a child is enrolled making a child abuse report pursuant to Section 7103 of this title a summary of any confirmed report of sexual abuse or severe physical abuse of the Department concerning the child. The summary shall include a brief description of the circumstances of sexual abuse or serious physical abuse, the name of the parent or person responsible for the child's health or welfare, and the name of a Department employee who serves as a contact person regarding the case.~~

~~2. The Department shall not release data that would identify the person who made the initial child abuse or neglect report, other than an employee of the Department, or who cooperated in a subsequent investigation unless a court of competent jurisdiction orders release of the information for good cause shown.~~

~~3. The school principal shall forward to the receiving school all confirmed reports of sexual abuse and severe physical abuse received from the Department whenever a child transfers from one school district to another, and shall notify the Department of the child's new school, and address, if known.~~

~~4. Records maintained and transmitted pursuant to this section shall be confidential and shall be maintained and transmitted in the same manner as Special Education records or other such records, pursuant to Title 70 of the Oklahoma Statutes. Access to such records may be made available by the principal or designee to a person designated to assist in the treatment of or with services provided to the child. Such records shall be destroyed when the student reaches eighteen (18) years of age.~~

~~D. The transmission of and access to such records shall not constitute a waiver of confidentiality.~~

~~E. It shall be unlawful pursuant to the Oklahoma Child Abuse Reporting and Prevention Act Children's Code for the Commission for Human Services, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.~~

Comment [C052]: Subsections A & B were moved to Article 2, Reporting & Investigations.

Comment [C053]: Sections C, D, E, F, G deleted because school access to confidential records now found in sub-section H of confidential records section.

~~F. Any person to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this section.~~

~~G. The Department shall submit the summary of confirmed sexual abuse or severe physical abuse of a child on forms developed by the Department. Such forms shall contain a warning that the information contained therein is confidential and may only be released to a person designated by the principal to assist in the treatment of or with services provided to a child.~~

§ 7005-1.9 . Cases Involving Death or Near Death of a Child - Release of Certain Information to Public

A. For purposes of this section, the term "near death" means the child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

B. In cases involving the death or near death of a child when a person responsible for the child has been charged by information or indictment with committing a crime resulting in the death or near death of the child, there shall be a presumption that the best interest of the public will be served by public disclosure of certain information concerning the circumstances of the investigation of the death or near death of the child and any other investigations within the last three (3) years concerning that child, or other children while living in the same household.

C. 1. At any time subsequent to seven (7) days, but no more than thirty (30) days, of the date the person responsible for the child has been criminally charged, the Department of Human Services, the district attorney, the district court clerk, and the judge having jurisdiction over the case, upon request, shall release certain information to the public as follows:

a. a confirmation shall be provided by the Department as to whether a report has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,

b. confirmation shall be provided by the Department as to whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department in response to a previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

c. the dates of any judicial proceedings prior to the death or near death of the child,

d. recommendations submitted by each participant in writing at the judicial proceedings including recommendations made at the hearing as they relate to custody or placement of a child, and

e. the rulings of the court.

2. Specific recommendations made and services rendered by the Department described in any progress reports of a pending case submitted to the court may be disclosed by the Department.

D. 1. At any time subsequent to seven (7) days, but no more than thirty (30) days, of the date the person responsible for the child has been criminally charged, the Oklahoma Commission on Children and Youth shall, upon request, release certain information to the public as follows:

a. a confirmation shall be provided by the Commission as to whether a report of suspected child abuse or neglect has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,

b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department and the Commission in response to any previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

c. the dates of any judicial proceedings prior to the death or near death of the child,

d. recommendations submitted by the Department and the Commission shall be provided in writing including recommendations made at the hearing as they relate to custody or placement of a child, and

e. the rulings of the court.

2. Specific recommendations made by the Commission described in any progress reports of a pending case submitted to the court may be disclosed by the Commission.

E. Any disclosure of information pursuant to this section shall not identify or provide an identifying description of any complainant or reporter of child abuse or neglect, and shall not identify the name of the child victim's siblings or other children living in the same household, the parent or other person responsible for the child or any other member of the household, other than the person criminally charged.

NEW LAW: SOCIAL RECORDS NOT TO BE FILED IN COURT RECORDS

Social records as defined by this Article shall not be filed in the court record unless so ordered by the court. If filed in the court record, the social records shall be placed in confidential envelopes in the court file and may only be accessed by the person who is the subject of the records, or attorney for such person, except as provided by Section XXXXX of this title or this Article.

Comment [DoHS54]: Social records will not be filed in the court record absent a court order. This safeguards the privacy of this information which is required to be kept confidential by federal law.

Comment [DoHS55]: Reference is to the section on disclosure of records without a court order.

§10-7107. Confidentiality - Violation - Penalty

A. ~~Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the~~ The reports required by Section 7103 Article 2 of this title or any and all other information acquired pursuant to the Oklahoma Child Abuse Reporting and Prevention Act Children's Code shall be confidential and may be disclosed only as provided in Section 7111 of this title and the Oklahoma Children's by this Code, applicable state or federal law, regulation or court order.

B. The confidential records and information that are authorized to be disclosed pursuant to this Article shall remain confidential and the use of such information shall be limited to the purposes for which disclosure is authorized. Persons or agencies obtaining records pursuant to this Article are prohibited from disclosing the contents of such records to another person or agency unless specifically authorized to do so by law or by the terms of a court order.

Comment [DoHS56]: Editor's Note: Confidentiality section is being moved here to a stand alone section at the end of this Article so that we will have only 1 section dealing with confidentiality & penalties.

C. The disclosure of any confidential records or information made by the Department pursuant to law or a court order shall not be deemed a waiver of confidentiality or privilege, and any recipient of such records or information shall protect them against unauthorized disclosure and maintain them confidentially and in compliance with state and federal law.

~~BD. Except as otherwise provided by the Child Abuse Reporting and Prevention Act any violation of the confidentiality requirements of the Child Abuse Reporting and Prevention Act shall, upon conviction, be~~ Any person or agency who knowingly permits, assists or encourages the release, disclosure or use of confidential records or information for any commercial, political or unauthorized purpose may be prosecuted for contempt of court or for a misdemeanor, which shall upon conviction be punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

§10-7005-1.8. Maintenance of records.

Court and agency records required to be maintained pursuant to law regarding deprived children shall be maintained by the court or agency until otherwise provided by law.

OKLAHOMA CHILDREN'S CODE

ARTICLE 7 – PERSONS OR AGENCIES RECEIVING CUSTODY
RIGHTS & DUTIES

§10-7003-7.1. Persons or agencies receiving custody - Rights and duties.

~~A. This section applies to person, institutions or agencies, other than the Department, which receive custody of a child pursuant to a court order as provided by the Oklahoma Children's Code.~~

Comment [DoHS1]: Editor's Note: Language in this section has been reworked to make it very clear that we are separating out the Department from other persons or private agencies. No change to substance, just format.

~~B. 1. The person, institution or agency 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 the following for the child:~~

- ~~a. food, clothing, and shelter;~~
- ~~b. medical care as authorized by the court; and,~~
- ~~c. education and discipline for the child.~~

~~2. The court shall complete a form approved by the Oklahoma Supreme Court to verify information that has been considered prior to the custody transfer.~~

~~B. 1 2 . Except for an emergency psychiatric admission pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, such~~ The person, institution, agency or department may provide or arrange for the emergency admission, provision of an inpatient evaluation or inpatient treatment of a such child minor only pursuant to a court order as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient psychological behavioral health services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to such child minor, as necessary and appropriate, in the absence of a specific court order for such services.

Comment [DoHS2]: The term "behavioral health services" will replace such terms as "psychological services", because the former encompasses more than the latter.

~~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 or administrative order or decision.~~

Comment [DoHS3]: Medical care in encompassed in part B(1) above.

~~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~~ behavioral health care or treatment, to the person, institution, or agency or department having custody of the child, or

Comment [DoHS4]: See above comment. The term "behavioral" is replacing the term "mental".

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 medical care surgery or extraordinary care in instances where an emergency exists, as determined by competent medical authority.

C. 1. ~~If the child is placed in the custody of a person, institution, or agency the Department of Human Services, whether in emergency, temporary or permanent custody, the person, institution or agency Department shall ensure the child is not returned to the care or supervision of any person from whom the child was removed or to any person the court has previously ordered not to have contact with the child, without specific authorization from the court. determine the appropriate placement of the child. However, under no circumstances may the Department of Human Services return a child to a parent that contributed to the child being deprived due to abuse or neglect, without prior approval of the court. Any change in the placement of a child adjudicated to be deprived shall be in accord with the provisions of subsection B of Section 7003-5.4a of this title.~~

Comment [DoHS5]: The changes in this sub-section are primarily clean-up & clarification that this section of the law concerns persons & agencies other than the Department who receive legal custody of a child from a court.

2. The person, institution, or 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 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, termination of parental rights and proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.~~

§10-7002-2.1. Responsibility for deprived children.

A. It shall be the responsibility of the Department of Human Services to provide care for deprived children who are committed to the custody of the Department.

B. The Department shall provide for the care of such children pursuant to ~~Article IV of this~~ the Oklahoma Children's Code.

Comment [DoHS6]: Language clean-up.

Comment [CO7]: Editor's Note: DHS duties are listed in several sections of the OCC., so it would be better to refer to OCC, rather than listing all of the Articles.

§10-7004-1.1. Additional duties and powers of Department.

In addition to the other powers and duties prescribed by law, the Department of ~~Human Services~~ shall have the power and duty to:

1. Provide for the ~~temporary~~ care and treatment of children taken into protective or emergency custody pursuant to the provisions of ~~Article III~~ of the Oklahoma Children's Code, and placed in the Department's custody by an order of the ~~juvenile~~ court.

In providing for the temporary care and treatment of ~~an alleged deprived child placed in the Department's custody~~, such children the Department shall:

a. place ~~such the~~ children in a children's shelter, a foster home, ~~or a relative's home-group home~~, or in any licensed facility established for the care of children.

In determining any placement for a child who has been removed from the custody of a custodial parent and placed with the Department in emergency ~~or protective~~ custody, priority shall be given by the Department to the placement of such child with the noncustodial parent of the child unless such placement is not in the best interests of the child. ~~If it is determined by the Department that placement with the noncustodial parent is not in the best interests of the child, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be specified in the agency records concerning the child. In addition, such reasons shall be made known to the court by the Department,~~

b. if ordered by the court, provide supervision of children alleged to be deprived who are placed by the court in the custody of a parent, relative or other responsible person. Such supervision shall, be in accordance with ~~standards established by rules promulgated by the Commission for Human Services consist of periodic visitation with the child, the child's custodian, and such other persons~~

Comment [DoHS8]: Changes in this section are primarily language clean-up.

Comment [DoHS9]: This language is deleted because Judge Fransein is drafting a preference section that will be either cross referenced or put here as well.

~~as may be necessary to assess the safety of the child and to offer voluntary services. Such supervision~~ Department and shall not exceed the period allowed for the filing of a petition or, if a petition is filed, the period authorized by the court,

c. admit an alleged deprived child ~~in the Department's emergency custody to a hospital or mental~~ behavioral health facility as provided in ~~Section 5-507 of Title 43A of the Oklahoma Statutes and shall, if such child is found by the court to be a child in need of mental health treatment, place the child, as provided in paragraph 2 of subsection D of Section 5-512 of Title 43A of the Oklahoma Statutes~~ the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

d. provide such outpatient ~~mental~~ behavioral health care and treatment as may be necessary to preserve the health and safety of an alleged deprived child in emergency custody and as prescribed by a qualified mental behavioral health professional.

e. ~~Each child placed in the Department's emergency custody shall receive,~~ provide, as soon as practicable, educational instruction through enrollment in a public school or an alternative program consistent with the needs and abilities of the child,

ef. provide or prescribe treatment services for the family of ~~a~~ an alleged deprived child placed in the Department's emergency custody if such services are voluntarily requested and the family is otherwise eligible under ~~application~~ applicable law and rules promulgated by the ~~Commission~~ Department for the services offered, and

f. ~~provide for each child placed in the Department's emergency custody to receive, as soon as practicable after the filing of the petition, an initial health screening to identify any health problems that require immediate treatment, to diagnose infections and communicable diseases and to evaluate injuries or other signs of neglect or abuse. The Department shall provide such medical care as is necessary to preserve the child's health~~ in accordance with the provisions of

Article _____ of this Code. ~~and protect the health of others in contact with the child;~~

2. Provide for the care and treatment of an adjudicated deprived child placed in the Department's temporary custody by an order of the juvenile court. In providing for ~~the such~~ care and treatment of an adjudicated deprived child placed in ~~the Department's custody~~, the Department:

a. shall review and assess each ~~deprived child placed in its custody~~ to determine the type of placement and services consistent with the needs of the child in the nearest geographic proximity to the home of the child as possible. ~~Such review and assessment shall include an investigation of the personal and family history of the child and the child's environment, and any necessary physical or mental examination.~~ In making such review, the Department may use any facilities, public or private, which ~~offer to aid in the determination of the correct placement of the child~~ assessment,

b. shall develop and, ~~upon approval by the court~~, implement an individual ~~treatment and~~ service plan for each ~~deprived child placed in the Department's custody~~ in accord with the requirements of Section ~~7003-5.1 et seq.~~ _____ of this title,

c. may ~~place~~ return a deprived child ~~back in to~~ the home of the parent or legal guardian from whom the child was removed ~~child~~ with prior approval of the court ~~pursuant to subsection B of Section 7003-7.1 of this title~~, or place the child in the home of a non-custodial parent, relative of the child, in a foster home, in a ~~public or private~~ children's shelter, in a group home, in an independent living program, or in any licensed facility established for the care of ~~deprived~~ children. ~~No deprived child shall be placed in an institution operated by the Department,~~

d. may admit a deprived child ~~in the Department's custody~~ to a hospital or mental behavioral health facility as provided in ~~Section 5-507 of Title 43A of the Oklahoma Statutes~~ and shall, if such child is found by the court to be a child in need of mental health treatment, ~~place the child as provided in paragraph 2 of subsection D of Section 5-512 of Title 43A of the Oklahoma Statutes~~, the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

e. may provide such outpatient ~~mental~~ behavioral health care and treatment as may be necessary to meet the treatment needs of a deprived child in the Department's custody and as prescribed by a qualified behavioral professional, and

f. shall, if ordered by the court, provide supervision of children adjudicated deprived who are placed by the court in the custody of a parent, relative or other responsible person. Such supervision shall ~~be,~~ in accordance with ~~standards established in rules promulgated by the Commission~~ Department; ~~consist of periodic visitation with the child, the child's custodian, and such other persons as may be necessary to determine compliance with the court-approved ordered individual treatment and service plan. Such supervision shall not exceed a period of six (6) months unless extended by the court for good cause shown;~~

Comment [DoHS10]: This deleted text is being moved to the review section.

g. provide such medical care as is necessary to preserve the child's health in accordance with the provisions of Article _____ of the Oklahoma Children's Code.

3. ~~Transfer~~ The Department may move any a child in its custody from any authorized placement to another authorized placement if such transfer is consistent with the treatment needs of the child or as may be required in an emergency, subject to the provisions of Section 7003-5.4a _____ of this title; The Department, in placing a child who has reentered foster care, shall consider previous foster parents placements as well as a kinship foster home if available. The placement must be consistent with the best interests of the child.

4. The Department has the authority to consent to travel for a child in its custody outside the jurisdiction of the court, except that court approval is required for travel outside the United States. Permission for school or organization activities requiring consent and not prohibited by rule by the Department, may be given by the foster parent. ~~In providing for the outpatient mental health care and treatment of children in its custody, utilize, to the maximum extent possible and appropriate, the services available through:~~

- ~~a. the guidance centers operated by the State Department of Health,~~
- ~~b. the Department of Mental Health and Substance Abuse Services, and~~
- ~~c. community-based private nonprofit agencies and organizations;~~ and

Comment [DoHS11]: Language deleted due to being unnecessary.

5. ~~Provide, when voluntarily requested by a parent, legal guardian or custodian pursuant to rules promulgated by the Commission, family preservation or other services aimed at the prevention of child abuse or neglect.~~ The Department shall receive notice of all court proceedings regarding any child in its custody and shall, upon application, be allowed to intervene as a party for a specified purpose, to any court proceedings pertaining to the care and custody of the child.

Comment [C012]: Editor's Note: This sentence re-worked to clarify intent we approved per comment below.

~~B6.~~ The Department may participate in federal programs relating to ~~deprived abused and neglected~~ children and services for such children; and apply for, receive, use and administer federal funds for such purposes.

Comment [DoHS13]: Editor's Note: This addition of the phrase "for a specified purpose" is consistent with the sub-committee's discussion that intervention should be limited to a specific purpose.

~~E7.~~ The Department shall receive interest earnings on the investment by the State Treasurer of monies, to be credited to an agency special account, for the benefit of and held in trust for persons placed in the custody of the Department or in residence at facilities maintained by the Department.

§10-7003-5.4. Information to accompany child placed outside child's home.

A. The court shall ensure that the following information accompanies any deprived child placed outside the child's home as soon as the information becomes available:

1. Demographic information;
2. Strengths, needs and general behavior of the child;
3. Circumstances which necessitated placement;
4. Type of custody and previous placement;
5. Pertinent family information including, but not limited to, the names of family members who are and who are not, by court order, allowed to visit the child and the child's relationship to the family which may affect placement;
6. Known and important life experiences and relationships which may significantly affect the child's feelings, behavior, attitudes or adjustment;
7. Whether the child has third-party insurance coverage which may be available to the child;
8. Education history to include present grade placement, last school attended, and special strengths and weaknesses. ~~The Department of Human Services~~

shall also assist the foster parents in getting the foster child's school records and gaining school admission; and

9. 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.

B. When the Department of Human Services places a child in out-of-home care, the Department shall provide the placement providers with sufficient medical information to enable the placement providers to care for the child safely and appropriately. Such medical information shall include, but not be limited to:

1. Any medical or psychological conditions;
2. Diseases, illnesses, accidents, allergies, and congenital defects;
3. The child's Medicaid card or information on any other third-party insurer, if any; and
4. Immunization history.

~~C. 1. When the Department places a child in out-of-home care, the placement providers may request the Department to provide contagious or infectious screening examinations or tests on the child and provide the results to such placement providers.~~

Comment [DoHS14]: Deleted as unnecessary; policy covers.

~~2. The Department shall provide for the examinations or tests on the child in accordance with rules promulgated by the Commission for Human Services and based on the Centers for Disease Control guidelines for time and frequency of testing, and shall, for a child, regardless of age, in the Department's emergency or temporary custody, obtain the parental consent or, if parental consent cannot be obtained due to refusal or inability to locate, the Department shall have the authority to give consent for such examinations or tests and the release of such results to the placement providers. Any parental consent received by the Department, pursuant to the provisions of this section, shall also apply to any future examinations or tests and release of such results as deemed necessary by the Department upon the request of the placement providers. The Department has the authority to consent to the examinations or tests and the release of such test results for a child, regardless of age, in the Department's permanent custody.~~

Comment [CO15]: Part C2 & 3 deleted because covered in the Article on Medical Treatment.

3. The Department may also designate other persons who may request the performance of such examinations or tests on the child, including, but not limited to, Department employees, direct caregivers and physicians.

D. The Department or child placing agency throughout the child's placement shall inform the foster parent of any costs and expenses related to providing foster care services for the child for which the foster parent may be eligible for reimbursement.

Comment [CO16]: Deleted because it covered in policy.

~~§10-7003-7.2. Children becoming unmanageable and uncontrollable.~~

~~If a child who has been adjudicated as a deprived child, and who has been placed in the custody of the Department of Human Services becomes unmanageable and uncontrollable while in the legal custody of the Department, the Department may return the child to the court having original jurisdiction for further disposition or may provide information to the district attorney and request the filing of a petition alleging the child to be delinquent, in need of supervision, or in need of mental health treatment, if such petition is warranted by the facts in the case.~~

Comment [DoHS17]: This section is obsolete & inapplicable to current OCC law.

§10-7004-3.2. Rules, policies and procedures regarding children in Department custody.

A. ~~The Commission for Human Services Department shall promulgate written rules, outline policies and procedures governing the operation of those facilities operated with by or under contract with the Department of Human Services wherein children may be housed placed. 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.~~

Comment [DoHS18]: Language clean-up.

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 or family visits, or solitary confinement;~~

Comment [DoHS19]: Language clean-up.

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;~~

Comment [DoHS20]: Language clean-up.

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 or if authorized by the court for the protection of the child;~~

Comment [DoHS21]: The amendment here allows mail to be inspected in the presence of the child for contraband or if the court has authorized it for the child's protection.

5. ~~A child shall have reasonable opportunity a right to communicate and to visit with his family on a regular basis, and to communicate with persons in the community provided the communication or visitation is in the child's best interests;~~

Comment [DoHS22]: The child has a right to contact & communication with family & community, if in the child's best interests.

~~6. A child shall have immediate timely access to medical care as needed, and shall receive necessary psychological and psychiatric services;~~

Comment [DoHS23]: Language clean-up. Psychological & psychiatric type services are addressed separately below.

~~7. A child in the custody or care of the Department shall be provided access to an 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;~~

Comment [DoHS24]: Language clean-up. Deleted text is unnecessary & is covered by State education laws & policies.

~~8. A child shall have a right to reasonable access to an the child's attorney upon request;~~

Comment [DoHS25]: The amendment emphasizes the child's right access the child's attorney.

9. A child shall be afforded a grievance procedure, including an appeal procedure; and

10. A child's mental behavioral 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, ~~servin~~g under the supervision of qualified mental health professionals as such term is defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

Comment [DoHS26]: Language clean-up; The term "behavioral health" is replacing "mental health" because it broadens the scope.

11. Use of physical force, when authorized, shall be the least force necessary under the circumstances and shall be permitted only under the following circumstances:

Comment [DoHS27]: This section is added because it fits here and the parallel stand alone statute with the same language (§7004-3.3) is being deleted.

a. For self-protection;

b. To separate children who are fighting;

c. To restrain children in danger of inflicting harm to themselves or others; or

d. To deter children who are in the process of leaving the facility without authorization.

C. Any contract or agreement entered into by the Department of ~~Human Services~~ for the residential care and treatment of children in the custody of the Department of ~~Human Services~~ shall provide that the contractor shall comply with the provisions of subsections A and B of this section ~~and the provisions of this part.~~

Comment [DoHS28]: Language clean-up.

§10-7004-3.3. Use of physical force - Mechanical restraints.

A. ~~Use of physical force in facilities operated by the Department of Human Services wherein children are housed shall be permitted only under the following circumstances:~~

Comment [DoHS29]: Moved to §7004-3.2(B)(11) above with slight modification.

~~1. For self-protection;~~

~~2. To separate children who are fighting;~~

~~3. To restrain children in danger of inflicting harm to themselves or others; or~~

~~4. To deter children who are in the process of leaving the facility without~~

authorization.

~~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 children 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 facilities operated with the Department of Human Services or the Department of Mental Health and Substance Abuse Services wherein children are housed shall be minimal and shall be prohibited except as specifically provided for in the rules of each of the Departments.~~

§7202(4) a. When a child is placed into foster care, the child shall be placed, when the safety and well-being of the child can be assured, with relatives, or other persons having a kinship relationship with the child, who are determined to be suitable, capable and willing to serve as caretakers for the child.

Comment [DoHS30]: Language has been streamlined & moved here from the foster care act.

b. ~~For a deprived child, a placement with suitable relatives or other persons having a kinship relationship with the child shall only be made when such placement is in the best interests of the child. For a delinquent child or a child in need of supervision, a placement with suitable relatives or other persons having a kinship relationship with the child shall only be made when such placement is in the best interests of the child and when such placement is consistent with the state's interest in the protection of the public.~~

Comment [CO31]: Editor's note: Deletion because the OCC applies only to alleged or adjudicated deprived children. (05-21-08)

c. ~~A kinship placement shall be made when the placement that meets the treatment needs of the child, and supports the case plan goals for that child and the child's family and is in the best interests of the child; provided however, if the child is determined to be an "Indian Child" as defined by the federal and state Indian Child Welfare Acts the placement preferences specified by Section 1915 of Title 25 of the United States Code and Section 40.2 of this title shall apply.~~

Comment [DoHS32]: Editor's note: The language of this sub-section was moved here from the foster care act. The 3 sub-parts have been consolidated into 2 sub-parts. Language added to ensure compliance with ICWA.

§7202.12 When two or more children in foster care are siblings, every reasonable attempt should be made to place them in the same home. In making a permanent placement, such children should be placed in the same permanent home or, if the siblings are separated, should be allowed contact or visitation with other siblings; provided, however, the best interests of each sibling shall be the standard for determining whether they should be placed in the same foster placement or permanent placement, or allowed contact or visitation with other siblings.

Comment [DoHS33]: This part moved here from foster care act.

~~§7204C. Neither the Department of Human Services and the Department of Juvenile Justice nor a child-placing agency shall not be liable for any costs or expenses expended voluntarily by a foster parent for a foster child which are in excess of the funds authorized for providing foster care services to the foster child.~~

Comment [C034]: This part moved here from the foster care act. Language clean-up.

§10-7205. Foster placements - License or authorization.

Comment [C035]: This section moved here from the foster care act. Language clean-up.

- A. Except as otherwise provided by this section, no child in the custody of the Department of Human Services or the Department of Juvenile Justice shall be placed with any foster placement unless the foster placement has a current license or authorization issued pursuant to the Oklahoma Child Care Facilities Licensing Act or meets licensing standards as required by the Oklahoma Child Care Facilities Licensing Act and is otherwise approved for foster care by the state agency for children within its custody.
- B. Except as otherwise provided by this section, no person, corporation or other legal entity shall receive a child for foster care or provide foster care services to a child unless such legal entity has a license or meets licensing standards as required by the Oklahoma Child Care Facilities Licensing Act, and is otherwise approved by the state agency for children within its custody.
- C. The provisions of this section shall not be construed to prohibit foster placement of children in foster homes licensed or approved by Indian tribes, pursuant to the terms in Section 40.8 of this title.

§10-7206.3. Previous foster parent a preferred placement option.

~~Unless there is a kinship placement available, a foster parent shall be considered as a preferred placement option when the foster child who was formerly placed with the foster parent is to be reentered into foster care at the same level and type of care, if that placement is consistent with the best interests of the child and other children in the foster parent's home.~~

Comment [DoHS36]: Deleted from the Foster Care Act & moved to 7004-1.1 with slight modification.

§10-7207. Grounds for determination of placement.

Comment [C037]: The Committee decided that this section needs to be here & in the disposition section and that placement should be controlled by best interests

- A. In determining placement of a deprived child in foster care:
1. The Department of Human Services or the court, if the court does not place the child with the Department of Human Services, and any child-placing agency shall be governed by the best interests of the child; and

2. Such child may express a preference as to placement and the preference may be given with or without the parents, foster parents, guardians, or any other parties being present. The Department of Human Services, the court, or the child-placing agency shall determine whether the best interests of the child will be served by the child's preference. The Department of Human Services, the court, or the child-placing agency shall not be bound by the child's preference and may consider other facts in determining the placement.

Comment [DoHS38]: The underscored language is taken from the deleted part C below.

~~B. In determining placement of a delinquent child or a child in need of supervision in foster care:~~

1. ~~The Department of Juvenile Justice or the court, if the court does not place custody of the child with the Department of Juvenile Justice, and a child-placing agency shall be governed by the best interests of the child consistent with the state's interest in the protection of the public; and~~
2. ~~Such child may express a preference as to placement. The Department of Juvenile Justice, the court, or the child-placing agency shall determine whether the best interests of the child, consistent with the state's interest in the protection of the public, will be served by the child's preference. The state agency, the court, or the child-placing agency shall not be bound by the child's preference and may consider other facts in determining the placement.~~
- C. ~~If a deprived child, a delinquent child or child in need of supervision expresses a preference, the preference may be given with or without the parents, foster parents, guardians, or any other parties being present.~~

§10-7209. Foster parent eligibility assessment - Criminal history investigation - Treatment and service plan - Periodic medical examinations.

- A. 1. Except as otherwise provided by law, the Department of ~~Human Services~~ or the Department of Juvenile Justice Office of Juvenile Affairs shall not place a child in ~~out-of-home placement~~ foster home prior to completion of:
 - a. a foster parent eligibility assessment on the foster parent applicant,
 - b. a national criminal history records search based upon submission of fingerprints for any adult residing in the home, as required by the Oklahoma Child Care Facilities Licensing Act and the Oklahoma ~~Foster Care and Out-of-Home Placement Act~~ Children's Code, and
 - c. a check of any child abuse registry maintained by a state in which the prospective foster parent or any adult living in the home of the prospective foster parent has resided in the preceding five (5) years.

Provided, however, the state agencies may place a child in the home of a foster parent, pending completion of the national criminal history records search, if the foster parent and every adult residing in the home of the foster parent have resided in this state for at least five (5) years immediately preceding placement.

2. a. The Department of ~~Human Services~~ shall be the lead agency for disseminating fingerprint cards to courts and child-placing agencies for obtaining and requesting a national criminal history records search based upon submission of fingerprints from the Oklahoma State Bureau of Investigation. The Department of Juvenile Justice Office of Juvenile Affairs may directly request

Comment [C039]: Editor's Note:
Due to licensing issues, we need to leave OJA in this section.

national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history of any individual for which such a search is required pursuant to this section.

b. Courts and child-placing agencies may request the Department of ~~Human Services~~ to obtain from the Oklahoma State Bureau of Investigation a national criminal history records search based upon submission of fingerprints for foster parents and other persons requiring such search pursuant to the Oklahoma Child Care Facilities Licensing Act and the Oklahoma ~~Foster Care and Out-of-Home Placement Act~~ Children's Code. Any fees charged by the Oklahoma State Bureau of Investigation or the Federal Bureau of Investigation for such searches shall be paid by the requesting entity.

c. Either the Department of ~~Human Services~~ or the Office of Juvenile Affairs, whichever is applicable, shall contract with the Oklahoma State Bureau of Investigation to obtain national criminal history records searches based upon submission of fingerprints.

d. (1) If the Department of ~~Human Services or the Office of Juvenile Affairs~~ is considering placement of a child with an individual in an emergency situation and after normal business hours, the Department may request local law enforcement to conduct a criminal history records search based upon submission of the individual's name, race, sex, date of birth and social security number.

(2) Within five (5) business days of the name-based search, the Department shall submit fingerprints on the individual to the Oklahoma State Bureau of Investigation. In the event the individual refuses to submit to a name-based or fingerprint search, the Department shall either not place or shall remove the child from the individual's home.

e. Upon request for a national criminal history records search based upon submission of fingerprints, the Oklahoma State Bureau of Investigation shall forward one set of fingerprints to the Federal Bureau of Investigation for the purpose of conducting such a national criminal history records search.

~~3. The Department of Human Services, pursuant to Section 7003-5.3 of this title, and the Department of Juvenile Justice, pursuant to Section 7303-5.2 of this title, shall conduct an assessment of each child in its custody which shall be designed to establish an appropriate treatment and service plan for the child.~~

Comment [DoHS40]: Editor's note: The deletion of the sub-section was because the assessment & ISP of the child are dealt with in a different section.

B. 1. A child-placing agency shall not place a child who is in the custody of the agency in out-of-home placement until completion of a foster parent eligibility assessment ~~or~~ and a national criminal history records search based upon submission of fingerprints has been completed for each individual residing in the home in which the child will be placed, as required pursuant to the Oklahoma Child Care Facilities Licensing Act or the Oklahoma ~~Foster Care and Out-of-Home Placement Act~~ Children's Code, and a check of any child abuse registry maintained by a state in which the prospective foster parent or any adult living in the home of the prospective foster parent has resided in the past five (5) years; provided, however, the child-placing agency may place a child in a foster family home pending completion of the national criminal history records search if the foster parent and every adult residing in the home have resided in this state for at least five (5) years immediately preceding the placement.

~~2. In addition, a satisfactory assessment of the out-of-home placement shall be conducted by the child-placing agency prior to foster placement.~~

C. 1. Whenever a court awards custody of a child to an individual or a child-placing agency other than the Department of Human Services or the Department of Juvenile Justice or the Office of Juvenile Affairs, for placement of the child, the court shall:

- a. require that when custody is placed with an individual, a foster family eligibility assessment be conducted for the foster parents prior to placement of the child, and
- b. require that if custody is awarded to a child-placing agency, a foster family eligibility assessment be conducted as required by the Oklahoma Child Care Facilities Licensing Act.

2. A child-placing agency other than the Department of Human Services or the Office of Juvenile Affairs shall, within thirty (30) days of placement, provide for an

assessment of the child for the purpose of establishing an appropriate ~~treatment~~ and individualized service plan for the child. The court shall require the ~~treatment~~ and individualized service plan to be completed in substantially the same form and with the same content as required by the Oklahoma Children's Code for a deprived child or as required by the Oklahoma Juvenile Justice Code for a delinquent child or a child in need of supervision.

3. The child shall receive a complete medical examination within thirty (30) days of initial placement unless a medical examination was conducted on the child upon the removal of the child and the court finds no need for an additional examination.

4. The child may receive such further diagnosis and evaluation as necessary as determined by the court to preserve the physical and mental well-being of the child.

D. 1. When the court awards custody of a child to an individual or a child-placing agency as provided by this subsection, the individual or child-placing agency shall be responsible for the completion of and costs of the national criminal history records search based upon submission of fingerprints, the foster parent eligibility assessment, the preparation of ~~a treatment and an individualized~~ service plan, and the medical examination required by this subsection.

~~2. The Department of Human Services and the Department of Juvenile Justice Office of Juvenile Affairs shall be responsible for the completion of and costs of the foster parent eligibility assessment and any national criminal history records search based upon submission of fingerprints, preparation of a treatment and service plan, and the medical examination required by this subsection only for the children placed in the custody of the state agency. The state agency may provide for reimbursement of such expenses, costs and charges so incurred pursuant to the Oklahoma Children's Code and the Juvenile Justice Code, as applicable.~~

Comment [DoHS41]: Editor's Note: this deleted text needs to remain, but be moved to the end of this Article as a stand alone along with another subpart that also needs to remain.

NEW STAND ALONE SECTION – TO BE MOVED TO FRONT PART OF TITLE 10

~~E. A 1. Upon any voluntary out-of-home placement of a child by a parent into foster care with a child-placing agency, the child-placing agency shall conduct an assessment of the child in its custody which shall be designed to establish an appropriate plan for placement of the child. Following the assessment, the child-placing agency shall establish an individual treatment and service plan for the child. A copy of each plan shall be provided to the child if the child is twelve (12)~~

Comment [CO42]: Editor's Note: This section has been moved out of the OCC to the front part of Title 10 as a stand alone section.

years of age or older and to the child's parent or guardian. The plan shall at a minimum:

- a. be specific,
- b. be in writing,
- c. be prepared by the agency in conference with the child's parents,
- d. state appropriate deadlines,
- e. state specific goals for the treatment of the child,
- f. describe the conditions or circumstances causing the child to be placed in foster care,
- g. describe the services that are necessary to remedy and that have a reasonable expectation of remedying the conditions or circumstances causing the child to be placed in foster care,
- h. state to whom the services will be delivered and who will deliver the services, and
- i. prescribe the time the services are expected to begin and the time within which expected results can reasonably be accomplished.

2. The child shall receive a complete medical examination within thirty (30) days of placement in foster care.

~~F. B.~~ The child may receive such further diagnosis and evaluation as is necessary to preserve the physical and mental well-being of the child.

~~G. C.~~ Subsequent to initial placement, the child placed in foster placement shall have a medical examination, at periodic intervals, but not less than once each year.

~~H. D.~~ Prior to any proposed counseling, testing or other treatment services, the court or child placing agency shall first determine that the proposed services are necessary and appropriate.

~~I. E.~~ 1. If the assessment and medical examination disclose no physical, mental or emotional reasons for therapeutic foster care, a child voluntarily placed with a child placing agency shall be placed in a regular foster family home. If therapeutic foster care is required, the child may be placed only in foster homes that are certified as therapeutic foster homes pursuant to the Oklahoma Child Care Facilities Licensing Act.

~~2.~~ No child shall be eligible for any reimbursement through the state Medicaid program for placement in therapeutic foster care unless such placement has been reviewed and approved pursuant to rules regarding medical necessity for therapeutic foster care placement promulgated by the Oklahoma Health Care Authority Board.

Comment [DoHS43]: Editor's Note: This part of the statute is being retained & will be a stand alone section at the end of this Article.

§10-7214. Voluntary foster care placement.

A. The Department of Human Services, including, but not limited to, the Developmental Disabilities Services Division, may accept a child into voluntary foster care placement when requested by the parent having legal custody of the child or when requested by a child residing in foster care who reaches eighteen (18) years of age and wishes to continue to reside in the foster care home pursuant to the provisions of subsection B of this section.

Comment [DoHS44]: Amendments to this section are primarily language clean-up.

- B. 1. Any child may be accepted into voluntary foster care placement with the Department.
2. The Department shall inform a parent considering voluntary foster care placement of a child, or the child residing in foster care who attains eighteen (18) years of age and wishes to continue to reside in the foster care home, of the following as applicable:
 - a. a parent who enters a voluntary foster care placement agreement may at any time request that the agency return the child,
 - b. evidence gathered during the time the child is voluntarily placed in foster care may be used at a later time as the basis for a petition alleging that the child is deprived, or as the basis for a petition seeking termination of parental rights,
 - c. the timelines and procedures for voluntary foster care placements.
3. Upon acceptance of a child into voluntary foster care placement, the Department shall prepare a notice of placement signed by the parent or the child residing in foster care who reaches eighteen (18) years of age and wishes to continue to reside in the foster care home.
4. A period of voluntary foster care placement pursuant to the provisions of this section shall not exceed ninety (90) days except as otherwise provided by the ~~Commission for Human Services~~ Department by rule.
5. Except as otherwise provided by this section or Section 7006-1.1 of Title 10 of the Oklahoma Statutes, voluntary foster care placement pursuant to the conditions and restrictions of this subsection shall not constitute abandonment, or abuse or neglect as defined in the Oklahoma Children's Code.
6. The ~~Commission~~ Department shall promulgate rules for the purpose of assessing parents for the full or partial cost of voluntary foster care placement.

~~C. The Department may:~~

- ~~1. Participate in federal programs relating to deprived children and services for such children; and~~
- ~~2. Apply for, receive, use and administer federal funds for such purposes.~~

Comment [DoHS45]: Language deleted as unnecessary.

~~**§7221C.** The Department or child-placing agency shall visit each foster child a minimum of one (1) time per month, with no less than two visits per quarter in the foster placement. Required visitations for the foster child are to be made in the home of the foster parent, except as provided in paragraph 2 of subsection C of Section 7206 of this title. If there is good cause, other than an allegation of abuse or neglect, to believe the foster child needs to whenever possible and if indicated, the child may be interviewed alone without the foster parent present, then the foster parent shall provide a location in the home where the foster child can be questioned without the foster parent's being present.~~

Comment [DoHS46]: Editor's Note: Reconciliation of §7206(2)(C) & §7221(C)

NEW STAND ALONE SECTION: Renumbered from §§7209(D)(2) & (I)(2)

2. A. The Department of Human Services and the Department of Juvenile Justice

Office of Juvenile Affairs shall be responsible for the completion of and costs of

Comment [DoHS47]: Editor's Note: These two sub-parts need to remain as a stand alone since they carry fiscal impact.

the foster parent eligibility assessment and any national criminal history records search based upon submission of fingerprints, preparation of a treatment and service plan, and the medical examination required by this subsection only for the children placed in the custody of the state agency. The state agency may provide for reimbursement of such expenses, costs and charges so incurred pursuant to the Oklahoma Children's Code and or the Oklahoma Juvenile Justice Code, as applicable.

2 B. No child shall be eligible for any reimbursement through the state Medicaid program for placement in therapeutic foster care unless such placement has been reviewed and approved pursuant to rules regarding medical necessity for therapeutic foster care placement promulgated by the Oklahoma Health Care Authority Board.

FISCAL IMPACT

Print Date: November 18, 2008

**OKLAHOMA CHILDREN'S CODE
ARTICLE 8 – MISCELLANEOUS PROVISIONS**

**§10-1211. Establishment of Education and Training Requirements -
Judicial Personnel and District Attorneys**

Comment [CO1]: The amendments in this section are primarily clean-up & elimination of redundant language. The focus of this statute is to ensure specialized training for judicial personnel & other personnel with juvenile docket responsibility.

- A. 1. The Supreme Court is required to establish by rule, education and training requirements for judges, associate judges, special judges, and referees who have juvenile ~~or domestic~~ docket responsibility. Rules shall include, but not be limited to, education and training relating to juvenile law, child abuse and neglect, foster care and out-of-home placement, domestic violence, behavioral health treatment, risk factors which may identify domestic abuse and potential violence and the relationship between alcohol or drug abuse and violence, establishing safe visitation and supervised arrangements and standards for a child and parties involved in a court-ordered visitation and other similar topics.
2. ~~The Administrative Director of the Courts shall be responsible for developing and administering procedures and rules for such courses for judicial personnel.~~
- B. All judges having juvenile ~~or domestic~~ docket responsibility shall attend at least twelve (12) hours of training in such courses per each calendar year ~~pertinent to issues relating to juvenile law, child abuse and neglect, domestic abuse issues and other issues relating to children such as foster care and parental divorce, establishing safe visitation and supervised visitation arrangements and such other education and training specified by rule pursuant to this section. The Administrative Office of the Courts shall monitor the attendance~~

of judges having juvenile docket responsibility at such training relating to the topics described in paragraph A1 of this section.

3. The Administrative Director of the Courts shall be responsible for developing and administering procedures and rules for such courses for judicial personnel, including monitoring the attendance of judicial personnel at such training.

C B. District attorneys, and assistant district attorneys, Any district attorney, assistant district attorney, public defender, assistant public defender, attorney employed by or under contract with the Oklahoma Indigent Defense System, court-appointed or retained attorney, attorney employed by or under contract with a District Court whose duties include juvenile docket responsibility for the juvenile court docket shall complete at least six (6) hours of education and training annually in courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce relating to the topics described in paragraph A1 of this section. These education and training requirements may be accomplished through a collaborative effort between the judiciary and others with juvenile docket responsibilities.

1. Each judicial district shall be responsible for developing and administering procedures and rules for such courses for attorneys identified in sub-section B whose duties routinely include juvenile court docket responsibilities. The chief judge of each judicial district, or any designee judge with juvenile docket responsibilities, shall carry out this mandate within one year of the effective date of this legislation.

~~C. District attorneys and assistant district attorneys whose duties include responsibility for the juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The District Attorneys Council shall be responsible for developing and administering procedures and rules for such courses for district attorneys and assistant district attorneys.~~

~~D. Any public defender, or assistant public defender, whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The public defender shall be responsible for developing and administering procedures and rules for such courses.~~

~~E. Any attorney employed by or under contract with the Oklahoma Indigent Defense System whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The Executive Director of the Oklahoma Indigent Defense System shall be responsible for developing and administering procedures and rules for such courses.~~

~~F. Any court-appointed attorney or retained attorney whose duties routinely include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The chief judge of the judicial district for which a court-appointed attorney serves shall be responsible for developing and administering procedures and rules for such courses.~~

~~G. Any court-appointed special advocate (CASA) available for appointment pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce, including, but not limited to, risk factors which may identify domestic abuse and potential violence and the relationship between alcohol or drug abuse and violence, safe visitation and supervised visitation arrangements and standards for a child and parties. The chief judge of the judicial district for which a court-appointed special advocate serves shall be responsible for developing and administering procedures and rules for such courses.~~

~~H. The training and education programs required by this section shall be developed and provided by or in cooperation with the Child Abuse Training and Coordinating Council.~~

§10-7003-8.6. Referees.

A. Any judge who is assigned to hear juvenile cases in counties having a population in excess of eighty thousand (80,000) and where funding is available may appoint a suitable person or persons to act as referee or referees on a full-time or part-time basis, to hold office at the pleasure of the judge. ~~Such Referees~~ shall be lawyers licensed to practice law in this State and shall be specially qualified for their duties. Reasonable compensation shall be fixed by the presiding judge of the administrative district.

Comment [DoHS2]: Modified for immediate effectiveness of referee's recommended order; referee's recommended order becomes final order of court at expiration of 3 judicial days IF objection not filed. Removed requirement of written confirmation of court. Of course, court or referee can stay the effectiveness for court review of recommendations and the judge can require that all recommended orders of the referee must be expressly approved by a judge before becoming effective.

Comment [OSCN3]: Reduced from 100,000 and funding should be available. This is discretionary and not mandated.

Comment [OSCN4]: Compensation was not previously addressed nor mentioned.

~~B. The judge may direct that any case, or all cases of a class or within a county~~ to be designated by the judge, shall be heard in the first instance by a referee in the manner provided for the hearing of cases by the court. Upon the conclusion of the hearing in each case, the referee shall transmit to the court all papers relating to the case, together with the referee's findings of fact and conclusions of law, and recommendations in writing. All referees are subject to the administrative authority and assignment power of the chief judge of the juvenile court of the county. The duties and powers of referees shall be to hear and report all matters assigned by the chief juvenile judge and to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders of judgment.

Comment [DoHS5]: Clarification of duties of Referees assigned to the juvenile court.

~~B.C.1. Notice of the referee's findings and recommendations shall be given to the parent, guardian or custodian of the child, the child's attorney, guardian ad litem or court-appointed special advocate, foster parent or to any other person concerned whose case has been heard by the referee. A hearing by the court shall be allowed upon the filing with the court of a request for such hearing, if the request is filed within three (3) days after the service of such notice. In case no~~

Comment [DoHS6]: Three day waiting period eliminated & Referee's findings & recommendations become an order of the court upon being confirmed by the judge.

hearing by the court is requested, the findings and recommendations of the referee, when confirmed by an order of the court, shall become the decree of the court.

Comment [OSCN7]: A copy of the confirmed order will be provided to the parties & counsel.

Upon conclusion of the hearing, the referee shall provide a copy in writing of the recommended findings, conclusions and orders on the parties, counsel, and the referring judge *instanter* or as provided in Section 692.2 of title 12 of the Oklahoma Statutes.

2. ~~When confirmed by the referring judge, the recommendations of the referee become the findings and orders of the court and remain effective during the pendency of district court including remand to the referee, unless the judge:~~
~~a. expressly stays the effect of its order, or~~
~~b. modifies its order during the pendency of the review.~~

Comment [OSCN8]: Eliminate this provision.

2. Unless stayed by order of the referee or the reviewing judge, all orders of a referee shall become immediately effective and shall continue in full force and effect until vacated or modified upon rehearing by order of the reviewing judge. Any order entered by a referee becomes a final order of the reviewing court upon expiration of three (3) judicial days following its entry, unless a review was ordered or requested. The chief judge of the juvenile court may establish requirements that any or all recommended orders of the referee must be expressly approved by the reviewing judge before becoming effective.

Comment [OSCN9]: New paragraph to replace previous paragraph. Immediately effective unless referee or judge stays the referee's decision -- and becomes the order of the court by operation of law at end of 3 business days IF objection not filed. Beneficial where judge unable to sign on 3rd or 4th day -- yet allows judge to review.

2. ~~A review by the judge of the referee's findings shall be allowed if any party files a written motion for review or on the court's own motion within three (3) judicial days after notice of referee's order. The motion for review shall specify the grounds for review and the specific provisions of the recommended findings or orders disputed, and the court, upon receipt of a motion for review, shall set a time and place for a review hearing. The objecting party shall serve the motion for review and notice of hearing upon all parties to the action. Failure to timely file the motion for review shall waive any and all objections to the referee's findings and order and said order shall become the decree of the court.~~

Comment [OSCN10]: Can require confirmation of the judge versus immediate effectiveness.

~~a. The court shall accept the findings of fact of the referee unless they are clearly erroneous. The court, after a hearing, may adopt the report, modify it in whole or in part, receive further evidence or recommit it with instructions.~~

Comment [OSCN11]: Rather than an objection or "appeal", this is a review -- only as to those specific matters for which a review is sought.

Comment [OSCN12]: Gives court options re: referee recommendations.

~~D. All orders and findings recommended by a referee become an effective order when countersigned by a judge and remain effective during the pendency of a review, including a remand to the referee, unless a judge:~~

- ~~1. Expressly stays the effect of the order;~~
- ~~2. Changes the order during the pendency of the review; or~~
- ~~3. Changes or vacates the order upon completion of the review.~~

Comment [OSCN13]: Allows the court to immediately countersign the referee recommendations rather than waiting 3 days for objections time to lapse. This will be helpful with matters that need to take immediate effect (e.g., INT, detention hearings, show cause hearings).

C.1. Any party, as well as the Department when the child is in the Department's legal custody, may file a written objection to the referee's recommendations within three (3) judicial days after notice of the recommendations. The objection shall clearly specify the reason and grounds for the objection. On receipt of the objection, the reviewing court shall a hearing date for the review. The objecting party shall promptly provide a copy of the objection and notice of the review on the Department and all parties to the action. Failure to file a timely request for district court review shall constitute a waiver of any and all objections to the referee's recommendations.

2. The district court's review shall be limited to a review of the record developed before the referee.

Comment [OSCN14]: In such cases, where the relevant authorizing statute does not specifically provide for a trial de novo in the district court, the court must limit its consideration to a review of the record. *In re Gruber*, 1923 OK 204, ¶ 12, 214 P. 690, 692. Therefore, this subsection is not necessary.

3. The court shall accept the findings of fact of the referee unless they are clearly erroneous. After a review of the objection, the court may confirm or reconfirm the recommendations, reject or modify them in whole or in part, receive further evidence, or remand them with instructions.

§10-7003-8.2. Mileage and witness fees.

In proceedings pursuant to this Code, 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.

§10-7003-8.3. Penalties.

A willful violation of any provision of an order of the court issued under the provisions of this Code 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 county jail for not more than thirty (30) days, or both such fine and imprisonment.

§10-7005-1.6. Applicability of the Oklahoma Minor Identification Act.

If a child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card pursuant to the provisions of the Oklahoma Minor Identification Act, the provisions of the Oklahoma Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian or legal custodian of the child, fingerprints obtained and maintained pursuant to the Oklahoma Minor Identification Act may be used by law enforcement officers.

NEW SECTION: TRANSPORTATION

Comment [DoHS15]: Fiscal Impact: This law is needed for the safety of the child and the Department staff. Sometimes law enforcement is needed to transport children.

A. The court may issue an order directing the county sheriff or his designee of the county in which the court is located to provide transportation to a child who is the subject of a deprived proceeding, regardless of where the child is placed within the State, for purposes of the following:

1. transferring the child from his or her current placement to a designated inpatient treatment facility, as more further defined in Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
2. transferring the child from the inpatient treatment facility to court for hearing;
3. transferring the child from an out-of-county placement to court for hearing and returning the child back to the out-of-county placement;
4. assisting the Department in transporting a child from any location to placement when requested by the Department for purposes of insuring the safekeeping of the child as well as the Department employee.

B. The Department shall provide reimbursement to the county sheriff or his designee for necessary and actual expenses for transporting the child as follows:

1. A fee for the cost of personal services at the rate of Twelve Dollars (\$12.00) per hour;
2. Mileage reimbursement for each mile actually traveled at the rate established in the State Travel Reimbursement Act;
3. Meals for transporting personnel, not to exceed Seven Dollars (\$7.00) per meal; and
4. Meals for the child being transported, not to exceed Seven Dollars (\$7.00) per meal.

The Department shall process and mail reimbursement claims within sixty (60) days of receipt. Payments for services provided by the county sheriff's office shall be paid to the county and deposited in the sheriff service fee account.

C. The court issuing the transportation order shall make such provision for transportation and safekeeping of the child as is appropriate in the circumstances.

NEW LAW ATTORNEY FEES AGAINST THE STATE

A. Upon application with the court, the court may order the Office of District Attorney to pay attorney fees for the child's attorney if:

1. The child is in the legal custody of the Department;
2. The child's guardian ad litem or the child, through the child's attorney:
 - a. Requests in writing that the Office of District Attorney move for the termination of parental rights;
 - b. Gives the Office of District Attorney written notice that if the Office of District Attorney does not move for termination of parental rights, the child, through the child's attorney, intends to move for the termination of parental rights and seek an award of attorney fees;
 - c. Successfully moves for the termination of parental rights; and
 - d. Applies to the court for an award of attorney fees; and
3. The Office of District Attorney refuses to join and prosecute the petition or motion for the termination of parental rights or fails to act in a timely manner.

Comment [DoHS16]: Editor's Note: **Fiscal Impact**
New Mexico has a similar statute. Sometimes it is necessary for the child's attorney to act when the DA doesn't in order to achieve permanency for the child at the earliest opportunity.

§10-7002-2.2. Director to serve as legal guardian.

A. Whenever parental rights of a child have been terminated and the child is committed to the Department, the Director shall serve as the legal guardian of the estate of the child, until another guardian is legally appointed. The court shall appoint a guardian ad litem of the estate of the child when necessary 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.

1. When a child is in the emergency or temporary custody of the Department, the court may appoint an attorney or a parent as guardian ad litem of the estate of the child.

2. When a child is in the permanent legal custody of the Department, the Director shall serve as the legal guardian of the estate of the child, until an attorney guardian ad litem is appointed.

Comment [DoHS17]: As a practical matter, a GAL is needed to act on behalf of the child's property interests
Editor's Note: This section will be moved to Article 8 – Miscellaneous Provisions.

Comment [CO18]: Clarification that the juvenile court has authority to appoint a GAL whenever necessary and the appointment can be made in the deprived case.

3. A copy of the order appointing a guardian ad litem shall be provided to the Department.

B. When the appointment of a guardian ad litem is necessary, such appointment may be made in the deprived case; provided, the actions of the guardian ad litem shall be subject to the approval of the court with jurisdiction to adjudicate the property interests of the child.

OKLAHOMA CHILDREN'S CODE

ARTICLE 9 – PROGRAMS, CONTRACTS & ADMINISTRATIVE PROVISIONS

§10-7105.1. Priority of investigations or assessments - Community-based programs.

~~A. The Department of Human Services shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations or assessments on a priority basis in response to reports of child abuse or neglect.~~

Comment [DoHS1]: Sub-section A was deleted because it is covered in current §7106 which was moved to Article 2, Reporting & Investigations.

~~B. The Oklahoma Commission on Children and Youth and the Oklahoma Youth Services Association, in cooperation with the Department of Human Services, shall:~~

Comment [DoHS2]: This entire sub-section B concerning community based programs was moved here from OCARPA because it deals with Contracts & Programs.

1. Identify community-based prevention and intervention-related services and facilitate access to such services for children and families at risk of future abuse or neglect; and
2. Assist in the development and coordination of community-based programs that work to reduce the potential for abuse and neglect in at-risk families.

§10-7110. Multidisciplinary teams - Intervention in reports of abuse or neglect - Duties.

Comment [CO3]: Editor's Note: Moved here from OCARPA because it deals with multidisciplinary team programs, CAMA funding, etc.

A. 1. In coordination with the Child Abuse Training and Coordination Council, each district attorney shall develop a multidisciplinary child abuse team in each county of the district attorney or in a contiguous group of counties.
2. The lead agency for the team shall be chosen by the members of the team. The team shall intervene in reports involving child sexual abuse or child physical abuse or neglect.

B. The multidisciplinary child abuse team members shall include, but need not be limited to:

1. Mental health professionals licensed pursuant to the laws of this state or licensed professional counselors;
2. Police officers or other law enforcement agents with a role in, or experience or training in child abuse and neglect investigation;
3. Medical personnel with experience in child abuse and neglect identification;
4. Child protective services workers within the Department of Human Services;
5. Multidisciplinary child abuse team coordinators, or Child Advocacy Center personnel; and
6. The district attorney or assistant district attorney.

C. 1. To the extent that resources are available to each of the various multidisciplinary child abuse teams throughout the state, the functions of the team shall include, but not be limited to, the following specific functions:

- a. whenever feasible, law enforcement and child welfare staff shall conduct joint investigations in an effort to effectively respond to child abuse reports,
- b. develop a written protocol for investigating child sexual abuse and child physical abuse or neglect cases and for interviewing child victims. The purpose of the protocol shall be to ensure coordination and cooperation between all

agencies involved so as to increase the efficiency in handling such cases and to minimize the stress created for the allegedly abused child by the legal and investigatory process. In addition, each team shall develop confidentiality statements and interagency agreements signed by member agencies that specify the cooperative effort of the member agencies to the team,

c. freestanding multidisciplinary child abuse teams shall be approved by the Child Abuse Training and Coordination Council. The Child Abuse Training and Coordination Council shall conduct an annual review of freestanding multidisciplinary teams to ensure that the teams are functioning effectively. Teams not meeting the minimal standards as promulgated by the Child Abuse Training and Coordination Council shall be removed from the list of functioning teams in the state,

d. increase communication and collaboration among the professionals responsible for the reporting, investigation, prosecution and treatment of child abuse and neglect cases,

e. eliminate duplicative efforts in the investigation and the prosecution of child abuse and neglect cases,

f. identify gaps in service or all untapped resources within the community to improve the delivery of services to the victim and family,

g. encourage the development of expertise through training. Each team member and those conducting child abuse investigations and interviews of child abuse victims shall be trained in the multidisciplinary team approach, conducting legally sound and age-appropriate interviews, effective investigation techniques and joint investigations as provided through the Child Abuse Training and Coordination Council or other resources,

h. formalize a case review process and provide data as requested to the Child Abuse Training and Coordination Council for freestanding teams, and

i. standardize investigative procedures for the handling of child abuse and neglect cases.

2. All investigations of child sexual abuse and child physical abuse or neglect and interviews of child abuse or neglect victims shall be carried out by appropriate personnel using the protocols and procedures specified in this section.

3. If trained personnel are not available in a timely fashion and, in the judgment of a law enforcement officer or the Department of Human Services, there is reasonable cause to believe a delay in investigation or interview of the child victim could place the child in jeopardy of harm or threatened harm to a child's health or welfare, the investigation may proceed without full participation of all personnel. This authority applies only for as long as reasonable danger to the child exists. A reasonable effort to find and provide a trained investigator or interviewer shall be made.

D. 1. A multidisciplinary child abuse team may enter into an agreement with the Child Death Review Board within the Oklahoma Commission on Children and Youth and, in accordance with rules promulgated by the Oklahoma Commission on Children and Youth, conduct case reviews of deaths and near deaths of children within the geographical area of that multidisciplinary child abuse team.

2. Any multidisciplinary child abuse team reviewing deaths and near deaths of children shall prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the team relating to the review of the deaths and near deaths of children and a summary of the extent to which the state child protection system is coordinated with foster care and adoption programs and whether the state is efficiently discharging its child protection responsibilities. The report shall be completed no later than December 31 of each year.

E. Nothing in this section shall preclude the use of hospital team reviews for client-specific purposes and multidisciplinary teams, either of which were in existence prior to July 1, 1995; provided, however, such teams shall not be subject to the provisions of paragraph 1 of subsection A of this section.

F. 1. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:

- a. nonurban centers in districts with child populations that are less than sixty thousand (60,000),
- b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and
- c. urban centers in Oklahoma and Tulsa Counties.

2. The multidisciplinary child abuse team used by the child advocacy center for its accreditation shall meet the criteria required by a national association of child advocacy centers and, in addition, the team shall:

- a. choose a lead agency for the team,
- b. intervene in reports involving child sexual abuse and may intervene in child physical abuse or neglect,
- c. promote the joint investigation of child abuse reports between law enforcement and child welfare staff, and
- d. formalize standardized investigative procedures for the handling of child abuse and neglect cases.

G. Multidisciplinary child abuse teams and child advocacy centers shall have full access to any service or treatment plan and any personal data known to the Department which is directly related to the implementation of this section.

§10-7110.1. Child Abuse Multidisciplinary Account.

Comment [C04]: See above comment

A. 1. There is hereby created in the Department of Human Services a revolving fund to be designated the "Child Abuse Multidisciplinary Account".

2. The account shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department pursuant to the provisions of this section and Section 7110.2 of this title.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Department for the purposes provided in Sections 7110 and 7110.2 of this title.

4. Expenditures from the account shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. The account shall be administered by the Department for the benefit of children of Oklahoma and made available to eligible:

1. Coordinated multidisciplinary child abuse teams;
2. Nonurban child advocacy centers;
3. Mid-level nonurban child advocacy centers; and
4. Urban child advocacy centers.

C. 1. The Child Abuse Multidisciplinary Account shall consist of:

- a. all monies received by the Department pursuant to the provisions of Section 7110.2 of this title,
- b. interest attributable to investment of money in the Account, and
- c. money received by the Department in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified or collected pursuant to the provisions of this section and Section 7110 of this title.

2. The monies deposited in the Child Abuse Multidisciplinary Account shall at no time become monies of the state and shall not become part of the general budget of the Department or any other state agency. Except as otherwise authorized by this section, no monies from the Account shall be transferred for any purpose to any other state agency or any account of the Department or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

§10-7110.2. Allocation of monies in Child Abuse Multidisciplinary Account.

Comment [C05]: See above comment

A. 1. The Department of Human Services shall allocate monies available in the Child Abuse Multidisciplinary Account (CAMA).

2. Funds shall be allocated to:

- a. one functioning freestanding multidisciplinary child abuse team per county, as provided in Section 7110 of this title,
- b. one hospital team pursuant to subsection E of Section 7110 of this title, and
- c. one child advocacy center, accredited by the National Children's Alliance, per district attorney's district.

(1) A child advocacy center shall be eligible for Child Abuse Multidisciplinary Account (CAMA) funding upon accreditation by the National Children's Alliance. In addition, the child advocacy center must secure a third-year interim review to determine whether the child advocacy center continues to meet the National Children's Alliance standards in effect at the time of its last accreditation. If a child advocacy center fails the third-year review, the center will remain eligible for CAMA funding, but must have another review conducted in the fourth year. If the child advocacy center fails the fourth-year review, the center shall be ineligible to receive CAMA funding until such time as the center receives reaccreditation from the National Children's Alliance.

(2) The accredited center shall remain the center for the district attorney's district as long as eligibility is maintained pursuant to the provisions of Section 7110 of this title. If a center does not remain eligible pursuant to the provisions of Section 7110 of this title, endorsement by the district attorney as the child advocacy center for the district may be sought by any entity beginning with the calendar year after the center is determined to be ineligible. The two centers in district number (4) and district number (13) that were accredited as of the effective date of this act shall continue to receive funding at the nonurban level. Should one of the exempted centers close or no longer meet the criteria for a child advocacy center pursuant to the provisions of Section 7110 of this title, the center shall not be allowed to reopen in that district or to receive CAMA funds. The remaining center shall become the sole child advocacy center for the district attorney's district.

3. Funding distribution pursuant to the provisions of this subsection shall be determined:

a. by multiplying the number of applicants in each category by the corresponding weight as follows:

- (1) freestanding multidisciplinary child abuse team - 1,
- (2) hospital team - 1,
- (3) nonurban centers - 4,
- (4) mid-level nonurban centers - 6, and
- (5) urban centers - 24,

b. adding together the weighted results for all categories,

c. dividing the weighted result for each category by the sum of the weighted results for all categories, and

d. equally distributing funding to each applicant in the corresponding category based on the amounts obtained by multiplying the total available funding by the calculated percentages.

B. 1. Pursuant to the provisions of Section 7110.1 of this title, by January 31, 2003, and by January 31 of each year thereafter, the Department shall disburse monies from the Child Abuse Multidisciplinary Account to eligible multidisciplinary child abuse teams and to eligible child advocacy centers. A child advocacy center must be in compliance with the provisions of Section 7110 of this title to be eligible for Child Abuse Multidisciplinary Account funding. The disbursement shall be a single, annual disbursement, for the collection period of the preceding year beginning October 1 through September 30.

2. The Department of ~~Human Services~~, the Child Abuse Training and Coordinating Council and the Children's Advocacy Centers of Oklahoma, Inc., shall meet annually, after September 30, 2002, to review the amount of CAMA funds to be disbursed.

C. A team or center may carry over funding for a period of one (1) year after allocation, such one-year period to begin in January and end in December of the same year; provided, however, funds not used within twenty-four (24) months of the original allocation will be deducted from the contract amount for the next contract year. If a team or center is ineligible for funding in an upcoming year, unused funds from the current or previous years shall be returned to the CAMA account for use in subsequent years.

D. The Department of ~~Human Services~~ is hereby authorized to receive one half of one percent (0.5%) in administrative costs from the CAMA account.

~~§10-7004-1.2. Management information system for programs and services related to children, youth and families.~~

Comment [DoHS6]: Editor's Note: This section's requirements have been implemented & the section can be deleted.

A. ~~On or before October 1, 1996, the Department of Human Services shall implement an agency-wide management information system for all programs and services of the Department related to children, youth and families.~~

B. ~~The management information system shall:~~

- ~~1. To the maximum extent possible, be based upon the integration, utilization and modification, as necessary, of existing information systems within the Department;~~
- ~~2. Provide for the security of and limited access to the information;~~
- ~~3. Include case specific information, including outcomes, and have the ability to monitor the status of children and youth receiving services through the Department;~~
- ~~4. Be capable of providing management reports and information regarding the various children and youth programs of the Department, and of providing aggregate information necessary for planning, monitoring and evaluation of said programs and services; and~~

~~5. Be designed so that management and analytical reports can be readily generated for those who require them.~~

C. ~~1. The child welfare management information system implemented by the Department of Human Services shall be integrated with the management information system implemented by the Office of Juvenile Affairs by October 1, 1996.~~

~~2. The child welfare information system shall be available to persons authorized to obtain confidential records and reports of the Department of Human Services pursuant to Article V of the Oklahoma Children's Code.~~

§10-7004-1.3. Program planning and monitoring.

A. The Department of ~~Human Services~~ shall carefully define the children and youth programs of the Department as to their purpose, the population served and performance expectations. Planning for new programs and services and major

modifications to existing ones shall include evaluation of their effect on other programs and services and communication and coordination with other public and private children and youth service providers in order to assure successful and cost-effective implementation of the program. An evaluation component that includes monitoring and evaluation of client outcomes shall be incorporated into all of the Department's programs and services to children and youth, whether provided directly by the agency or through a contract.

1. All programs and services shall be designed to ensure the accessibility of the program to the persons served. Provision for transportation, child care and similar services necessary in order to assist persons to access the services shall be made. If the service is provided in an office setting, the service shall be available during the evening.

2. Programs and services shall be targeted to the areas of the state having the greatest need for them. The programs and services shall be designed to meet the needs of the area in which they are located. Programs and services intended for statewide implementation shall be implemented first in those areas that have the greatest need for them.

3. As a part of the Department's program planning and monitoring processes, the Department shall examine its programs and services to children and youth to ensure that the practices within them do not operate to detriment of minority children and youth.

4. All child care services and facilities operated by the Department shall be accredited by the National Council on Accreditation when applicable.

B. The Department shall develop a five-year plan for children and youth services provided by the agency. The plan shall be reviewed annually and modified as necessary. Agency budget recommendations of the Department for services to children and youth shall be based upon documented needs, and the development of budget recommendations and priorities shall be closely integrated with agency and interagency program planning and management.

C. The Department shall annually review its programs and services and submit a report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Supreme Court of the State of Oklahoma, analyzing and evaluating the effectiveness of the programs and services being carried out by the Department. Such report shall include, but not be limited to:

1. An analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report;
2. A description of programs and services which should be implemented;
3. Statutory changes necessary;
4. Relevant information concerning the number of children in the Department's custody during the period covered by the report; and
5. Such other information as will enable a user of the report to ascertain the effectiveness of the Department's programs and services.

Comment [CO7]: Editor's Note:
NCA does not accredit shelters &
group home.

~~§10-7004-1.4. Mental health services for children in need of treatment - Placement disputes - Arbitrator.~~

Comment [C08]: Editor's Note:
This is no longer needed & has been removed from the delinquent side also.

~~A. The Department of Human Services and the Department of Mental Health and Substance Abuse Services shall jointly:~~

~~1. Establish procedures which shall ensure that children placed in the custody of the Department of Human Services shall have adequate and appropriate access to mental health services, including but not limited to inpatient services in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, emergency services, group homes, and day treatment services, provided through the Oklahoma Youth Center and to other appropriate facilities and programs operated by or available through the Department of Mental Health and Substance Abuse Services; and~~

~~2. Establish administrative procedures for the timely and expeditious resolution of any dispute which may arise over the placement of a child in a facility or program operated by the Department of Mental Health and Substance Abuse Services. Such procedures shall, at a minimum, provide:~~

~~a. — for a person designated by each Department to serve as its representative for the purpose of resolving any dispute which may arise over the placement of a child in an inpatient treatment facility operated by the Department of Mental Health and Substance Abuse Services; and~~

~~b. — that whenever there is no resolution of a dispute over the placement of a child in an inpatient facility operated by the Department of Mental Health and Substance Abuse Services within three (3) working days after the initial request of the Department of Human Services for the consent of the Department of Mental Health and Substance Abuse Services for the placement of a child in a Department of Mental Health and Substance Abuse Services inpatient facility, an arbitrator provided for in subsection B of this section will be notified, and the matter will be immediately submitted for arbitration and that the decision of the arbitrator shall be a final decision; and~~

~~c. — an opportunity for the child whose placement is in dispute to be represented at any arbitration proceedings regarding his placement.~~

~~B. The Department of Human Services and the Department of Mental Health and Substance Abuse Services shall jointly select an individual to serve as arbitrator and an individual to serve as an alternate in case the arbitrator is unavailable. Any person selected to serve as an arbitrator or alternate arbitrator shall:~~

~~1. Be a person qualified to make a decision regarding the placement of a child found by a court to be a child in need of mental health treatment;~~

~~2. Agree to make his services immediately available upon notification of a dispute to be resolved; and~~

~~3. Agree to provide a decision within no more than one (1) week after notification of a dispute over the placement of a child.~~

~~C. If for any reason the Department of Human Services and the Department of Mental Health and Substance Abuse Services are unable to jointly agree upon a person to serve as arbitrator by January 1, 1987, the Commission on Children~~

and Youth shall select said person at its next regularly scheduled monthly meeting.

~~D. Nothing in this title shall be construed as prohibiting the Department of Mental Health and Substance Abuse Services from admitting a child, upon the voluntary application for admission by his parent or legal guardian and the recommendation of a qualified mental health professional for such admission, to a facility or program operated by the Department of Mental Health and Substance Abuse Services appropriate for the care and treatment of the child.~~

§10-7004-1.5 Kinship Foster Care Program.

Comment [C09]: Language clean-up for consistency w/ other changes.

A. There is hereby established a Kinship Foster Care Program in the Department of Human Services.

B. 1. a. When a child has been removed from the child's home and is in the care and custody of the Department, the Department shall attempt to place the child with a person determined by the Department to have a kinship relationship with the child if such placement is in the best interests of the child.

b. In determining a kinship placement for a child who has been removed from the custody of a custodial parent and placed with the Department in emergency or protective custody, priority shall be given by the Department to the placement of such child with the noncustodial parent of the child unless such placement is not in the best interests of the child. If it is determined by the Department that placement with the noncustodial parent is not in the best interests of the child, ~~custody placement shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be specified in the agency records concerning the child. In addition, such reasons shall be made known to the court by the Department.~~ A child's health, safety or welfare shall be of paramount concern in any placement.

2. The Department shall establish, in accordance with the provisions of this section, eligibility standards for becoming a kinship foster care family.

C. 1. Upon the completion of the records search to ascertain if there is an Oklahoma record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective kinship foster parent's home and subject to any other standards established by law or by the Department, a child may be placed in the kinship home. A kinship foster parent shall not be entitled to any payments for providing foster care until such foster parent receives final approval from the Department to be a kinship foster parent.

2. Following placement, the Oklahoma State Bureau of Investigation shall complete a national criminal history records search based upon submission of fingerprints for any kinship foster parent and any adult residing in the home of such parent, and shall make the results of the records search available to the Department pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, and applicable state and federal law. The Director of Human Services or designee may authorize an exception to the fingerprinting requirement for an adult residing in the kinship foster care home who has a severe physical condition which precludes such person's being fingerprinted.

3. The Department shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a kinship foster parent.

4. It shall be unlawful, except for the purpose of determining a person's eligibility for kinship foster care, for any person to disclose information obtained under this subsection.

5. Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

D. A person related by blood, marriage, adoption and by tie or bond to a child and/or to whom has been ascribed a family relationship role with the child's parents or the child may be eligible for approval as a kinship foster care parent.

E. The Department shall determine whether the person is able to effectively care for the foster child by:

1. Reviewing personal and professional references;
2. Observing during a visit to the home of the kinship foster care family; and
3. Interviewing the kinship foster care parent.

F. When the kinship foster parent is finally approved by the Department, in accordance with applicable state and federal law, rules promulgated by the Commission for Human Services regarding foster care services, the kinship foster care family shall be eligible to receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether monetary or in services. If a child is placed with a kinship foster parent prior to the home's final approval as a foster care home, the Department shall immediately refer such child and family for assistance through the Temporary Assistance for Needy Families Program.

G. 1. The Department and the kinship foster care parent shall develop a plan for the care of the child, which shall be periodically reviewed and updated.

2. The kinship foster parent shall cooperate with any activities specified in the case plan for the child including, but not limited to, counseling, therapy, court sessions, visits with the child's parents or other family members, and training.

H. The Commission for Human Services shall promulgate rules necessary to carry out the provisions of this section. ~~pursuant to the Administrative Procedures Act.~~

§10-7004-1.6. Short title - Purpose.

A. This section and Section 3230 of Title 70 of the Oklahoma Statutes shall be known and may be cited as the "Independent Living Act".

B. The purpose of the Independent Living Act shall be:

1. To ensure that eligible individuals who have been or are in the foster care program of the Department of Human Services due to abuse or neglect receive the protection and support necessary to allow the individuals to become self reliant and productive citizens through the provision requisite services that include, but are not limited to, transitional planning, housing, medical coverage and education; and
2. To break the cycle of abuse and neglect that obligates the state to assume custody of children.

Comment [CO10]: Changes are clean-up

C. Individuals eligible for services pursuant to the Independent Living Act include any individual up to twenty-one (21) years of age who has been in the custody of the Department of Human Services or a federally recognized Indian tribe due to abuse or neglect for any nine (9) of the twenty-four (24) months after the individual's sixteenth birthday and before the individual's eighteenth birthday.

D. Individuals who are eligible for services pursuant to the Independent Living Act and who are between eighteen (18) and twenty-one (21) years of age shall be eligible, ~~when funds become available~~, for Medicaid coverage, provided such individuals were also in the custody of the Department of Human Services or a federally recognized Indian tribe on the date they reached eighteen (18) years of age. ~~The Legislature directs the Oklahoma Health Care Authority to submit a State Medicaid Plan Amendment to the federal Health Care Financing Administration to provide medical coverage for such individuals to become effective fiscal year 2003.~~

§10-7004-1.7. Pilot program to serve children at high risk of abuse and neglect.

Comment [C011]: Clean-up

A. A pilot program to serve children at high risk of abuse and neglect shall be established by the Department of Human Services in consultation with an evaluation team created pursuant to this section if funds are available. ~~The pilot program shall begin no later than February 1, 2002, and end no later than May 1, 2005.~~

B. The pilot program shall:

1. Identify the populations of children at high risk of abuse and neglect and characteristics of those children at high risk of abuse and neglect, including, but not limited to, populations in which parental drug and/or alcohol abuse, mental illness, mental and/or physical disability and domestic abuse are an issue;
2. Develop and design programs to provide services to children at high risk of abuse and neglect;
3. Develop methods for coordinating state and local services to assist high risk children and their families;
4. Allow and provide for participation of both urban and rural concerns in developing and designing such programs;
5. Monitor, evaluate and review the programs implemented to serve populations of children at high risk of abuse and neglect; and
6. Include such other areas, programs, services and information deemed necessary by the Department of Human Services to provide a comprehensive assessment of the needs and programs necessary to provide assistance to children at high risk of abuse and neglect.

C. An evaluation team shall determine the effectiveness of the pilot program, and make a preliminary report to the Legislature, ~~no later than February 1, 2005.~~ and to the Department annually for as long as the program is funded. Such report shall cover:

1. Effective programs that will serve children that are at high risk of abuse and neglect;
2. Statewide expansion of programs;

3. Funding sources;
 4. Training of professionals to serve such populations;
 5. Monitoring, evaluating and reviewing continued effectiveness of such programs;
 6. Special needs of children at risk of abuse and neglect from parental addiction to drugs and alcohol and parental mental illness and mental and/or physical disability and from domestic abuse; and
 7. Recommendations regarding the issuance of grants and contracts for serving such high-risk populations.
- D. The evaluation team shall consist of not more than two representatives from the following entities who have expertise in child abuse prevention or a related field and who have an understanding of program evaluation techniques:
1. The Department of Human Services;
 2. The Department of Mental Health and Substance Abuse Services;
 3. The Oklahoma Commission on Children and Youth;
 4. The Oklahoma Indian Affairs Commission;
 5. The Oklahoma Institute for Child Advocacy;
 6. The Oklahoma Court-Appointed Special Advocate Association;
 7. The University of Oklahoma; and
 8. Oklahoma State University.
- E. 1. Upon receipt of recommendations of the team evaluating the pilot project established pursuant to this section which indicates that the expansion of the pilot project on a statewide basis would be economically feasible and practical, the Commission for Human Services shall promulgate rules for developing a statewide program serving populations of children at high risk of abuse and neglect, provided funding is available for such expansion.
2. Upon promulgation of rules by the Commission, the provisions of this section shall become effective statewide.
- F. ~~The Department of Human Services~~ may:
1. Contract for services necessary to carry out the duties of the Department pursuant to the provisions of this section; and
 2. Accept the services of volunteer workers or consultants and reimburse them for their necessary expenses pursuant to the State Travel Reimbursement Act.

§10-7004-1.8. Performance-based incentive compensation program for child welfare specialists.

~~On or before January 1, 2007, the Department of Human Services shall establish maintain~~ a performance-based incentive compensation program for employees exclusively working as child welfare specialists. All full-time child welfare specialists shall be eligible to participate in the performance-based incentive compensation program. Eligibility factors shall include, but not be limited to, child welfare specialists who have met or exceeded the suggested federal child welfare outcomes, received above-average employee evaluations, as defined by the Office of Personnel Management, completed Department-sponsored field training, and obtained an advanced higher education degree in social work or closely related field. The eligibility of a child welfare specialist

Comment [DoHS12]: Editor's Note:
Clean-up.

shall not be based upon the level of seniority that has been obtained by the child welfare specialist. The Oklahoma Commission for Human Services shall promulgate rules as necessary to implement the provisions of this section.

§10-7004-2.1. Community-based services and care for deprived children - Grants and contracts.

Comment [CO13]: Clean-up

A. The Department of ~~Human Services~~ shall, to the extent of funds available, directly or by grant or contract, develop and implement a diversity of community-based services and community-based care for children who are alleged or adjudicated deprived. Community-based services are prevention and remedial services including, but not limited to, home-based counseling, therapy and crisis intervention services, nonresidential educational, vocational, social and psychological diagnostic and counseling services, substance abuse treatment, sexual abuse treatment, emergency shelter and foster care, and other related protection, prevention and treatment services which are provided, whenever practicable, in or near a child's home community. If a child is placed with a noncustodial parent, the noncustodial parent's home shall be construed to be the child's home community. Community-based care is care in a foster home, group home, community residential center or similar nonsecure facility consistent with the individualized treatment needs of the child and provided, whenever practicable, in or near a child's home community. The Department is authorized to contract with any federal, state, local or tribal governmental agency or with any qualified private person, association or agency to develop, administer, coordinate or provide community-based services and community-based care.

B. The Department shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services and community-based care. A copy of such procedures shall be made available to any member of the general public upon request.

C. Requests for proposals developed by the Department shall be based upon documented client and service needs and identified priorities. The request for proposals shall clearly identify the program or services requirements, the population to be served and performance expectations. The agency shall adopt clear, written guidelines to ensure uniformity in the management, monitoring and enforcement of contracts for services. If in-state private providers are unable or unwilling to respond to the proposal, then out-of-state providers should be encouraged to respond.

D. Nothing in this section shall serve to limit the authority of the Department to secure federal funding for community-based services and community-based care or compliance by the Department with federal law and regulations governing the expenditure of such funds.

E. Any state-funded grant or contract for the establishment of community residential care or treatment facilities for children shall require, as a condition for receipt of such grant or contract, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been

made for providing the educational services to which residents of the facility are entitled pursuant to state and federal law.

F. The Department of ~~Human Services~~ is hereby authorized to, and shall, enter into cooperative agreements with the Department of Juvenile Justice for the use by both Departments of existing community-based programs, management information and client tracking systems, and other shared resources as deemed necessary or appropriate by both Departments.

G. The Department of ~~Human Services~~ is hereby authorized to expend a sum not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000.00) from monies appropriated for that purpose from the Human Services Fund during each fiscal year for the purpose of providing subsidy payments to licensed nonprofit child care institutions within the State of Oklahoma to furnish food, clothing, shelter and upkeep for Oklahoma children and to assist the agency in developing a more comprehensive program to meet the needs of each child in the program including, but not limited to, social services, recreational activities and individual, and family group counseling with the goal of returning the child to his family. Such subsidy shall be made on a per capital basis not to exceed One Thousand Two Hundred Dollars (\$1,200.00) per year and shall be expended in twelve (12) monthly payments beginning July 1 of the fiscal year. Nothing in this section shall preclude an individual from receiving federal matching funds for which he would otherwise be eligible.

§10-7004-3.1. Administration of children's facilities.

Comment [CO14]: Clean-up

A. 1. The Department of ~~Human Services~~ is authorized to manage and operate the children's shelter located at Oklahoma City, known and designated as the Pauline Mayer Children's Shelter, and the children's shelter located in Tulsa, known and designated as the Laura Dester Children's Shelter.

2. The Department is authorized to manage and operate, to the extent of funds available, such group homes as may be necessary to provide a diversity of placement alternatives for children adjudicated deprived and placed in the Department's custody.

B. The Commission for Human Services shall establish and maintain such methods of administration, including those necessary to establish and maintain a merit system of personnel administration, and shall prescribe such rules as it deems necessary for the efficient and effective operation of the children's facilities operated by the Department.

C. The Director of the Department of ~~Human Services~~ shall employ and fix the duties and compensation of a director or supervisor, and such other personnel as he deems necessary, for each of the children's facilities operated by the Department; provided that the Department shall promulgate, and in its hiring and employment practices, the Department shall adhere to, written minimum qualifications by position for personnel working with or around children in said facilities. Such minimum qualifications shall be designed to assure that such personnel possess sufficient education, training, experience and background to provide adequate and safe professional care and services to said children; and that the children will not be exposed to abuse, deprivation, criminal conduct, or

other unwholesome conditions attributable to employee incompetence or misconduct.

D. It shall be the duty of the State Fire Marshal and the Commissioner of Public Health to cause annual unannounced inspections of children's facilities operated by the Department, utilizing adequately trained and qualified inspection personnel, to determine and evaluate conditions in their respective areas of agency jurisdiction. Such inspections shall include, but not be limited to, compliance with minimum fire, life and health safety standards and compliance with minimum standards governing general sanitation of the institution. Reports of such inspections will be made in writing, itemizing and identifying any deficiencies and recommending corrective measure, and shall be filed with the Child Care Facilities Licensing Division of the Department of ~~Human Services~~, the Office of Juvenile System Oversight and the Commission on Children and Youth.

E. The Department of ~~Human Services~~ shall file copies of the reports of the inspections and recommendations of the accrediting agencies with the Office of Juvenile System Oversight.

F. The Department may give assistance to local school districts in providing an education to children in facilities operated by the Department, may supplement such education and may provide facilities for such purposes. It shall be the duty of the Department to assure that children in the aforesaid facilities receive educational services which will stress basic literacy skills, including but not limited to, curricula requirements, stressing reading, writing, mathematics, science and vocational-technical education.

§10-7004-3.4. Office of Client Advocacy.

Comment [CO15]: Clean-up

A. The Commission for Human Services is authorized and directed to establish the Office of Client Advocacy within the Department and to employ such personnel as may be necessary to carry out the purposes of this section and the duties listed in this section. Such personnel may be dismissed only for cause.

1. The chief administrative officer of the Office of Client Advocacy shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel Administration classification and compensation plan, but shall be an unclassified position.

2. The duties and responsibilities of the Advocate General are as follows:

- a. supervise personnel assigned to the Office of Client Advocacy,
- b. monitor and review grievance procedures and hearings,
- c. establish and maintain a fair, simple and expeditious system for resolution of grievances of:

(1) all children in the custody of the Department of ~~Human Services~~ regarding the substance or application of any written or unwritten policy or rule of the Department or of an agent of the Department or any decision or action by an

employee or an agent of the Department, or of any child in the custody of the Department,

(2) foster parents relating to the provision of foster care services pursuant to this section and Section ~~7204.1~~ _____ of this title, and

(3) all persons receiving services from the Developmental Disabilities Services Division of the Department of ~~Human Services~~,

d. investigate allegations of abuse, neglect, sexual abuse, and sexual exploitation, as those terms are defined in the Oklahoma ~~Child Abuse Reporting and Prevention Act~~, Children's Code by a caretaker person responsible for a child of children, regardless of custody:

(1) residing outside their own homes other than children in foster care,

(2) in a day treatment program as defined in Section 175.20 of this title, and submit a report of the results of the investigation to the appropriate district attorney and to the State Department of Health,

(3) receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, and

(4) residing in a state institution listed in Section 1406 of this title,

e. establish a system for investigating allegations of caretaker misconduct not rising to the level of abuse, neglect, sexual abuse or sexual exploitation with regard to any child or resident listed in subparagraph d of this paragraph,

f. coordinate any hearings or meetings of Departmental administrative review committees conducted as a result of unresolved grievances or as a result of investigations,

g. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Commission, the Office of Juvenile System Oversight and other appropriate persons as necessary,

h. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of any grievance which is not resolved in the favor of the complainant,

i. perform such other duties as required by the Director of the Department or the Commission, and

j. develop policies and procedures as necessary to implement the duties and responsibilities assigned to the Office of Client Advocacy.

B. The Office of Client Advocacy shall make a complete written report of their investigations. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

C. Except as otherwise provided by the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code, the reports required by Section ~~7103~~ _____ of this title or any other information acquired pursuant to the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code shall be confidential and may be disclosed only as provided in ~~Section 7111 of this title~~ and the Oklahoma Children's Code.

1. Except as otherwise provided by the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code, any violation of the confidentiality requirements of the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code

shall, upon conviction, be a misdemeanor punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

2. Any records or information disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purpose for which disclosure is authorized. Rules promulgated by the Commission for Human Services shall provide for disclosure of relevant information concerning Office of Client Advocacy investigations to persons or entities acting in an official capacity with regard to the subject of the investigation.

3. Nothing in this section shall be construed as prohibiting the Office of Client Advocacy or the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment or protection of a child alleged to be abused or neglected.

D. 1. The Office of Client Advocacy shall investigate any complaint alleging an employee of the Department or of a child-placing agency has threatened a foster parent with removal of a child from the foster parent, harassed a foster parent, or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section ~~7213~~ _____ of this title,
- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or child-placing agency.

2. The provisions of this subsection shall not apply to any complaint by a foster parent regarding the result of a criminal, administrative or civil proceeding for a violation of any law, rule or contract provision by that foster parent, or the action taken by the Department or a child-placement agency in conformity with the result of any such proceeding.

3. The Office of Client Advocacy shall at all times be granted access to any foster home or any child-placing agency which is certified, authorized or funded by the Department.

§10-7004-3.5. Provision of shelter and care to minor mothers who are victims of domestic abuse.

Comment [CO16]: Clean-up

A. A youth service shelter facility may provide shelter and care to a minor mother, who is the victim of domestic abuse or is seeking relief from domestic abuse for herself or on behalf of any of her children or both herself and any of her children.

B. A youth service shelter facility may provide such shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor mother or any of her children or both the minor mother and any of her children. Such shelter or care shall not extend beyond thirty (30) days unless the facility receives an order issued by a court to continue such services or the parent or guardian of the minor mother consents to such services.

C. The provisions of Section 856 of Title 21 of the Oklahoma Statutes shall not apply to any youth service shelter facility and any person operating such facility with regards to providing shelter and care pursuant to the provisions of this

section to a minor mother and any of her children who is a runaway from her parent or legal guardian.

D. The show cause hearing provided for in ~~Part 2 of Article III of this the~~ Oklahoma Children's Code shall be provided for the minor mother, who is seeking relief from domestic abuse for herself or on behalf of any of her children.

§10-7210. Recruitment of foster placement from child's relatives or from families of same minority racial or ethnic heritage.

Comment [CO17]: Language clean-up.

A. ~~The Department of Human Services, the Department of Juvenile Justice, and~~ each child-placing agency shall make special efforts to recruit foster placement parents for children in their custody from suitable relatives and kin of the child, and shall make diligent efforts to recruit foster and adoptive families that reflect the ethnic and racial diversity of children for whom foster and adoptive homes are needed. Provided, however, no person shall be denied the opportunity to become a foster or adoptive parent on the basis of the race, color, or national origin of the person, or of the child involved. No child shall be delayed or denied placement into foster care or adoption on the basis of the race, color, or national origin of the adoptive or foster parent, or of the child involved.

B. Diligent efforts to recruit shall include, but shall not be limited to, contracting and working with community organizations and religious organizations, utilizing local media and other local resources, conducting outreach activities, and increasing the number of minority recruitment staff employed by the Department, ~~of Human Services, the Department of Juvenile Justice and~~ the child-placing agency.

§10-7211. Foster parent associations - State agencies to cooperate and promote development.

~~The Department of Human Services and the Department of Juvenile Justice shall~~ cooperate with and shall help promote development of foster parent associations in each county in this state. The state agency shall provide foster parent associations with data, information and guidelines on the obligations, responsibilities and opportunities of foster parenting and shall keep the associations and their members apprised of changes in laws and rules relevant to foster parenting.

Comment [DoHS18]: Language clean-up.

§10-7212. Foster parent training and continuing education.

Comment [CO19]: Clean-up.

A. ~~The Department of Human Services, the Department of Juvenile Justice and~~ each child-placing agency shall develop:

1. A foster care education program to provide training for persons intending to furnish foster care services; and
2. Continuing educational programs for foster parents.

B. 1. In addition to any other conditions and requirements specified by the state agency or child-placing agency, as applicable, prior to placement of a child in foster placement other than kinship care, each foster parent shall have completed the training approved by the Department ~~of Human Services, the Department of Juvenile Justice~~ or the child-placing agency, as appropriate.

2. A foster parent providing kinship foster care shall, if possible, complete the training developed by the Department of Human Services for kinship foster care prior to placement or at such other times as required by the Department; provided, however, in no event shall such training take place later than one hundred twenty (120) days after placement of the child with such kinship foster parent. Until a kinship foster parent receives final approval from the Department to provide foster care services to a child, the kinship foster parent shall not be eligible to receive any payment for providing such foster care services.

3. Approved training shall require a minimum of twelve (12) hours of study related, but not limited, to physical care, education, learning disabilities, procedures for referral to and receipt of necessary professional services, behavioral assessment and modification, independent-living skills, and procedures for biological parent contact. Such training shall relate to the area of parental substitute authority, behavioral management techniques including, but not limited to, parent-child conflict resolution techniques, stress management, and any other appropriate technique to teach the foster parent how to manage the child's behavior in a manner appropriate to the age and development of the foster child.

4. The foster parent or person intending to provide foster care services may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas.

~~5. Within three (3) months of certification, foster parents and kinship foster parents must participate in training for behavioral management techniques which shall include, but not be limited to information regarding restraining and holding techniques, and other techniques appropriate for controlling potentially violent behavior in a manner appropriate to the age and development of the foster child.~~

C. In order to assist persons providing kinship foster care, the Department shall immediately refer such kinship foster parents and the child for assistance under the Temporary Assistance for Needy Families Program until the certification and training requirements have been completed.

D. Foster parent training programs may include, but need not be limited to, in-service training, workshops and seminars developed by the state agency; seminars and courses offered through public or private education agencies; and workshops, seminars and courses pertaining to behavioral and developmental disabilities and to the development of mutual support services for foster parents.

E. The Department of Human Services, the Department of Juvenile Justice and each child-placing agency shall provide statewide training, education, and continuing education programs for foster parents.

F. The Department of Human Services, the Department of Juvenile Justice or each child-placing agency shall notify a foster parent at least ten (10) business days in advance of the statewide scheduling of education, continuing education or foster parent training occurring near the vicinity of the home of a foster parent.

G. The Department of Human Services may also provide additional foster care training to a foster parent. A foster parent may request in writing to the Department of Human Services that additional foster parent training be provided.

Comment [DoHS20]: Deleted because this type of training is not necessary for all FPs, such as relative FP homes. Agency policy can address when this type of training may be required.

§10-7204.1. Allegations against employees of Department or child-placing agency by foster parent.

Comment [CO21]: Editor's Note: Moved from Foster Care Act to here since this section deals with programs.

A. 1. A foster parent may report to the Office of Client Advocacy of the Department of ~~Human Services~~ an allegation that an employee of the Department or of a child-placing agency has threatened the foster parent with removal of a child from the foster parent, harassed or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section ~~7213~~ ____ of this title,
- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or child-placing agency.

~~2. The provisions of this subsection shall not be construed to include any complaints from foster parents resulting from administrative, civil or criminal action taken by the employee or Department or child-placing agency for violations of law or rules, or contract provisions by the foster parent.~~

2. The provisions of this subsection shall not apply to any complaint by a foster parent regarding the result of a criminal, administrative or civil proceeding for a violation of any law, rule or contract provision by that foster parent, or the action taken by the Department or a child-placement agency in conformity with the result of any such proceeding.

Comment [CO22]: Reworded to be consistent with other previous page.

3. A reporter shall not be relieved of the duty to report incidents of alleged child abuse or neglect pursuant to the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code.

4. The Advocate General shall establish rules and procedures for evaluating reports of complaints pursuant to paragraph 1 of this subsection and for conducting an investigation of such reports.

B. 1. The Office of Client Advocacy shall prepare and maintain written records from the reporting source that shall contain the following information to the extent known at the time the report is made:

- a. the names and addresses of the child and the person responsible for the child's welfare,
- b. the nature of the complaint, and
- c. the names of the persons or agencies responsible for the allegations contained in the complaint.

2. Any investigation conducted by the Office of Client Advocacy pursuant to such information shall not duplicate and shall be separate from the investigation mandated by the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code or other investigation of the Department having notice and hearing requirements.

3. At the request of the reporter, the Office of Client Advocacy shall keep the identity of the reporter strictly confidential from the operation of the Department, until the Advocate General determines what recommendations shall be made to the Commission for Human Services and to the Director of the Department of ~~Human Services~~.

C. The Commission shall ensure that a person making a report in good faith under this section is not adversely affected solely on the basis of having made such report.

D. Any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation, pursuant to the provisions of this section, may be subject to loss of foster parent certification or licensure status.

§10-7206. Written contract - Information provided to foster parents - Supervision by child-placing agency.

A. The Department of ~~Human Services, the Department of Juvenile Justice~~ or any child-placing agency shall, prior to any out-of-home foster placement, enter into a written contract with the foster care placement provider. The contract shall provide, at a minimum:

1. That the state agency and the child-placing agency shall have access at all times to the child and to the foster placement;
2. A listing of any specific requirements, specific duties or restrictions in providing foster care services;
3. That any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child's attorney;
4. That the foster care placement provider shall comply with performance standards required pursuant to ~~the Oklahoma Foster Care and Out-of-Home Placement Act, the Oklahoma Children's Code, the Juvenile Justice Code, and the Oklahoma Child Care Facilities Licensing Act;~~
5. Information regarding the amount of payments to be made for foster care services, including but not limited to a description of the process involved in receiving payments, including projected time frames, information related to reimbursements for eligible costs and expenses for which the foster parent may be reimbursed and any information concerning the accessibility and availability of funds for foster parents;
6. That any foster child placed with a foster care placement provider shall be released to the state agency or the child-placing agency whenever, in the opinion of the state agency or the child-placing agency, the best interests of the deprived child require such release, ~~or the best interests of the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public, require such release pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act;~~ and
7. Such other information required by the state agency and the child-placing agency.

B. The state agency or child-placing agency shall provide the following information to the foster parent at the time of placement, along with a copy of the written contract required pursuant to subsection A of this section:

1. The names and telephone numbers of the child's case worker, the foster parents' case worker, the case workers' supervisors, and the contact within the state agency central office, or the name and telephone number of the contact

Comment [CO23]:
Editor's Note: This section as amended is moved from Foster Care Act to here because it deals with Programs
Changes are clean-up

person within the child-placing agency and any other medical, psychological, social or other pertinent information relating to foster care;

2. A copy of the grievance procedure established by the state agency or the child-placing agency pursuant to the ~~Oklahoma Foster Care and Out-of-Home Placement Act~~;
3. The name and telephone number of any foster parent association in the county of residence of the foster parent;
4. For foster parents of deprived children, the name and telephone number of any postadjudication review board established in the county of residence of the foster parent or the nearest postadjudication review board and the court having jurisdiction over the child;
5. A copy of the statement of foster parent rights;
6. Information detailing the foster parents' ability to submit information and written reports to the court, ~~or~~ and to petition request the court ~~directly~~ for review of a decision by the state agency or the child-placing agency to remove a foster child who has been placed with the foster parent, in accordance with the limitations and requirements of Section ~~7208~~ ____ of this title; and
7. A copy of the policies and procedures of the Department or child-placing agency which pertain to placement operations of the agency, and which may be necessary to properly inform the out-of-home placement providers of the duties, rights and responsibilities of the out-of-home placement providers and the Department.

C. 1. In addition to other requirements made pursuant to the Oklahoma Child Care Facilities Licensing Act, each child-placing agency shall maintain supervision of all children placed by the agency in foster placement and shall maintain supervision of and make regular visits to such foster placements.

2. The child-placing agency shall visit each foster placement no less than once every month.

3. The child-placing agency shall prepare and maintain a written report of its findings for each visit.

4. a. A complete written review of the placement, well-being and progress of any foster child in foster care with a child-placing agency shall be made by the child-placing agency as required by the ~~state agency with which the child-placing agency has a contract~~ Department.

b. If a child-placing agency is providing foster care services for a child pursuant to a written agreement or contract with the parents or guardian of a child, the child-placing agency shall provide a copy of the written review to the parents or guardian of the child. The written agreement or contract shall specify how often the review shall be conducted.

§7206.1 - Statement of Foster Parent's Rights

A. A statement of foster parent's rights shall include, but not be limited to, the right to:

1. Be treated with dignity, respect, and consideration as a professional member of the child welfare team;

Comment [CO24]: Moved here from former Foster Care Act. No changes to substantive content.

2. Be notified of and be given appropriate, ongoing education and continuing education and training to develop and enhance foster parenting skills;
3. Be informed about ways to contact the state agency or the child-placing agency in order to receive information and assistance to access supportive services for any child in the foster parent's care;
4. Receive timely financial reimbursement for providing foster care services;
5. Be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;
6. Be provided a clear, written explanation of the individual treatment and service plan concerning the child in the foster parent's home, listing components of the plan pursuant to the provisions of the Oklahoma Children's Code ~~and the Oklahoma Foster Care and Out-of-Home Placement Act~~;
7. Receive, at any time during which a child is placed with the foster parent, additional or necessary information that is relevant to the care of the child;
8. Be notified of scheduled review meetings, permanency planning meetings and special staffing concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child;
9. Provide input concerning the plan of services for the child and to have that input be given full consideration in the same manner as information presented by any other professional on the team;
10. Communicate with other foster parents in order to share information regarding the foster child. In particular, receive any information concerning the number of times a foster child has been moved and the reasons why, and the names and telephone numbers of the previous foster parent if the previous foster parent has authorized such release;
11. Communicate with other professionals who work with the foster child within the context of the team including, but not limited to, therapists, physicians, and teachers;
12. Be given, in a timely and consistent manner, any information regarding the child and the child's family which is pertinent to the care and needs of the child and to the making of a permanency plan for the child. Disclosure of information shall be limited to that information which is authorized by the provisions of Article ~~VI~~ VI of the Oklahoma Children's Code for foster parents ~~and Article VII of the Oklahoma Juvenile Code~~;
13. Be given reasonable notice of any change in or addition to the services provided to the child pursuant to the child's individual treatment and service plan;
14. a. Be given written notice of:
 - (1) plans to terminate the placement of the child with the foster parent pursuant to Section ~~7208~~ XXXX of this title, and
 - (2) the reasons for the changes or termination in placement, andb. The notice shall be waived only in emergency cases pursuant to Section ~~7208~~ XXXX of this title;
15. Be notified by the applicable state agency in a timely and complete manner of all court hearings, including notice of the date and time of any court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case;

16. Be informed of decisions made by the court, the state agency or the child-placing agency concerning the child;
 17. Be considered as a preferred placement option when a foster child who was formerly placed with the foster parent is to reenter foster care at the same level and type of care, if that placement is consistent with the best interest of the child and other children in the foster parent's home;
 18. Be provided a fair, timely, and impartial investigation of complaints concerning the foster parent's certification;
 19. Be provided the opportunity to request and receive a fair and impartial hearing regarding decisions that affect certification retention or placement of children in the home;
 20. Be allowed the right to exercise parental substitute authority;
 21. Have timely access to the state agency's and child placement agency's appeals process and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal;
 22. Be given the number of the statewide toll-free Foster Parent Hotline established in Section 7204 XXXX of this title; and
 23. File a grievance and be informed of the process for filing a grievance.
- B. ~~The Department of Human Services, the Office of Juvenile Justice,~~ and a child-placing agency under contract with the Department shall be responsible for implementing this section.
- C. Nothing in this section shall be construed to create a private right of action or claim on the part of any individual, ~~the Department of Human Services, the Office of Juvenile Affairs or any child-placing agency.~~

§10-7213. Grievance procedures for foster parents.

- A. ~~The Department of Human Services, the Department of Juvenile Justice and child-placing agencies shall each establish grievance procedures for foster parents with whom such state agencies or child-placing agencies contract.~~
- B. ~~The procedures for foster parents established by each state agency and child-placing agency shall contain the following minimum requirements:~~
1. Resolution of disputes with foster parents shall be accomplished quickly, informally and at the lowest possible level, but shall provide for access to impartial arbitration by management level personnel within the central office; and
 2. Prompt resolution of grievances within established time frames.
- C. ~~Each state agency~~ The Department and child-placing agency shall designate an employee to receive and process foster care grievances.
- D. ~~Each state agency~~ The Department and child-placing agency shall maintain records of each grievance filed as well as summary information about the number, nature and outcome of all grievances filed. Agencies shall keep records of grievances separate and apart from other foster parent files. A foster parent or a former foster parent shall have a right of access to the ~~grievance~~ record of grievances such person filed after the ~~grievance~~ procedure has been completed.

Comment [C025]: Editor's Note:
 This section was moved here from the Foster Care Act since it deals with Programs.
 Changes are clean-up

E. 1. Each foster parent shall have the right, without fear of reprisal or discrimination, to present grievances with respect to the providing of foster care services.

2. ~~Each state agency~~ The Department shall promptly initiate a plan of corrective discipline including, but not limited to, dismissal of any ~~agency~~ Department employee or cancellation or nonrenewal of the contract of a child-placing agency determined by the state agency, through an investigation to have retaliated or discriminated against a foster parent who has:

- a. filed a grievance pursuant to the provisions of this section,
- b. provided information to any official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or the child-placing agency.

3. The provisions of this paragraph shall not be construed to include any complaint by the foster parent resulting from an administrative, civil or criminal action taken by the employee or child-placing agency for violations of law or rules, or contract provisions by the foster parent.

§10-7220. Grandparents - Legislative findings and declaration - Informational and educational program - Distribution of informational brochures.

A. The Oklahoma Legislature finds and declares that:

1. An increasing number of children under the age of eighteen (18) years, including many children who would otherwise be at risk of abuse or neglect, are in the care of a grandparent;
2. A principal cause for this increase is an increase in the incidence of parental substance abuse, child abuse, mental illness, poverty, and death, as well as concerted efforts by families and by the child welfare service system to keep children with relatives whenever possible;
3. Grandparents providing primary care for at-risk children may experience unique resultant problems, such as financial stress due to limited incomes, emotional difficulties related to dealing with the loss of the child's parents or to the child's unique behaviors, and decreased physical stamina combined with a much higher incidence of chronic illness;
4. Many children being raised by grandparents experience one or more of a combination of emotional, behavioral, psychological, academic, or medical problems, especially those born to a substance-abusing mother or those who are at risk of child abuse, neglect, or abandonment; and
5. Grandparents providing primary care for children lack appropriate information about the issues of kinship care, the special needs, both physical and psychological, of children born to a substance-abusing mother or who are at risk of child abuse, neglect, or abandonment, and the support resources currently available to them.

B. The Department of ~~Human Services~~ shall establish an informational and educational program including, but not limited to, the area of parental substitute authority, for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing

Comment [CO26]: Editor's Note:
This section was moved here from
the Foster Care Act since it deals with
Programs.

mothers. As a part of the program, the Department shall develop, publish, and distribute an informational brochure for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing mothers. The information provided under the program authorized by this section may include, but is not limited to, the following:

1. The problems experienced by children being raised by grandparents;
 2. The problems experienced by grandparents providing primary care for children who have special needs;
 3. The legal system as it relates to children and grandparents;
 4. The benefits available to children and grandparents providing primary care; and
 5. A list of support groups and resources located throughout the state.
- C. The brochure may be distributed through hospitals, public health nurses, child protective services, medical professional offices, elementary and secondary schools, senior citizen centers, public libraries, and community action agencies selected by the Department.

§10-7003-5.6b. Supported Guardianship and Long-Term or Permanent Foster Care

~~A. 1. Pursuant to the provisions of this subsection, the Department of Human Services shall establish and administer an ongoing program of supported guardianship to assist families wishing to make a long-term commitment to a child by accepting guardianship of the child. The supported guardianship program shall enable the family to assume the parental role without ongoing Department oversight but allow the family to return to the Department for services as needed.~~

Comment [DoHS27]: This part of the statute needs to remain due to existing supported guardianships.

~~2. As soon as the federal Department of Health and Human Services authorizes additional demonstration projects for additional use monies designated for expenditure for Title IV-E of the Social Security Act, which requires federal funds to be spent on children in foster care, the Department of Human Services shall request a waiver or demonstration project authorization for such monies. The waiver shall allow federal funds to be utilized to support children whose guardianship is transferred in situations where adoption is not possible and an identified family has made a long-term commitment to the child in addition to other programs authorized by law.~~

Comment [DoHS28]: These parts of this section are deleted because DHS did not get a waiver, thus this language is no longer applicable.

~~3. Upon obtaining a waiver, the Department shall conduct a three-year demonstration program. The children involved must meet state-established criteria.~~

~~4. The program of supported guardianship shall be operational upon receipt and according to the terms of the approved waiver.~~

~~B. By January 1 1998, the Department of Human Services and the Department of Juvenile Justice shall submit to the Chairman of the House of Representatives Human Services Committee and the Chairman of the State Senate Human Resources Committee written recommended legislation for the development and~~

implementation of a program for the long-term permanent placement of children in cases where the court has found that adoption of the child or termination of parental rights to the child is not possible or not in the best interests of the child. Such program shall include, but not be limited to, permanent guardianship through the juvenile court, supported guardianship and long-term or permanent foster care of the child. The Postadjudication Review Advisory Board and the Oklahoma Commission on Children and Youth shall assist the departments in meeting the requirements of this section.

**TITLE 10 – CHILDREN
GENERAL PROVISIONS
10 O. S. § 4 through 10 O.S. § 24.1**

§ 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.~~

Comment

This section should be deleted. The court has held that this section is simply declarative of the common law and has no application in determining child support. See LeCrone v. LeCrone, 1979 OK 98, 596 P.2d 1262. Many of the sections in beginning of Title 10 came from the old Field Code and was adopted from the Dakotas without much thought at the time of statehood. Those statutes that have been unused since statehood should be eliminated. Those statutes which appear in conflict with later enactments should also be eliminated.

§ 5. Grandparental visitation rights

A. 1. Pursuant to the provisions of this section, any grandparent or grandparents of an unmarried minor child may seek and be granted reasonable visitation rights to the child which visitation rights may be independent of either parent of the child if:

- a. the district court deems it to be in the best interest of the child pursuant to subsection D of this section, and
- b. there is a showing of parental unfitness or unsuitability or that the child would suffer harm or potential harm without the granting of visitation rights to the grandparent or grandparents of the child, and
- c. (1) an action for divorce, separate maintenance or annulment involving the grandchild's parents is pending before the court,
(2) the grandchild's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled,
(3) the grandchild's parent who is a child of the grandparent is deceased,
(4) except as otherwise provided in subsection B or C of this section, legal custody of the grandchild has been given to a person other than the grandchild's parent, or the grandchild does not reside in the home of a parent of the child,
(5) grandparent had custody of the grandchild pursuant to Section 21.3 of this title, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent and the child,
(6) the grandchild's parent has deserted the other parent for more than one (1) year and there exists a strong, continuous grandparental relationship between the grandparent and the child,
(7) except as otherwise provided in subsection C of this section, the grandchild's parents have never been married, are not residing in the same household and

there exists a strong, continuous grandparental relationship between the grandparent and the child,

(8) except as otherwise provided by subsection C of this section, the parental rights of one or both parents of the child have been terminated, and the court determines that there is a strong, continuous relationship between the child and the parent of the person whose parental rights have been terminated, or
(9) at any other time and for such other reason the court deems it to be in the best interests of the child pursuant to subsection D of this section.

2. 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.

B. 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 the termination of visitation rights is ordered by the court having jurisdiction over the adoption after opportunity to be heard, and the court determines it to be in the best interest of the child.

C. 1. 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 grandparent and the child, and

c. the court determines such visitation rights to be in the best interest of the child.

2. 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 grandparent and the child, and

b. the court determines such visitation rights to be in the best interest of the child.

3. Except as otherwise provided by this section, the district court shall not grant to any grandparent of an unmarried minor child, visitation rights to that child:

a. subsequent to the final order of adoption of the child; provided however, any subsequent adoption proceedings shall not terminate any prior court-granted grandparental visitation rights unless the 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.

D. 1. In determining the best interest of the minor child, the court shall consider and, if requested, shall make specific findings of fact related to the following factors:

a. the needs of and importance to the child for a continuing relationship with the grandparent and the age and reasonable preference of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes,

b. the willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents,

- c. the length, quality and intimacy of the prior relationship between the child and the grandparent,
- d. the love, affection and emotional ties existing between the parent and child,
- e. the motivation and efforts of the grandparent to establish a relationship with the grandchild,
- f. the motivation of parent or parents denying visitation,
- g. the mental and physical health of the grandparent or grandparents,
- h. the mental and physical health of the child,
- i. the mental and physical health of the parent or parents,
- j. whether the child is in a permanent, stable, satisfactory family unit and environment,
- k. the moral fitness of the parties,
- l. the character and behavior of any other person who resides in or frequents the homes of the parties and such person's interactions with the child,
- m. the quantity of visitation time requested and the potential adverse impact the visitation will have on the child's customary activities,
- n. if both parents are dead, the benefit in maintaining an extended relationship, and
- o. such other factors as are necessary in the particular circumstances.

2. For purposes of this subsection:

- a. "harm or potential harm" means a showing that without court-ordered visitation by the grandparent, the child's emotional, mental or physical well-being could reasonably or would be jeopardized, and
- b. "parental unfitness or unsuitability" includes, but is not limited to, a showing that a parent of the child or a person residing with the parent:
 - (1) has a chemical or alcohol dependency, for which treatment has not been sought or for which treatment has been unsuccessful,
 - (2) has a history of violent behavior or domestic abuse,
 - (3) has an emotional or mental illness that demonstrably impairs judgment or capacity to recognize reality or to control behavior,
 - (4) has been shown to have failed to provide the child with proper care, guidance and support to the actual detriment of the child. The provisions of this division include, but are not limited to, parental indifference and parental influence on his or her child or lack thereof that exposes such child to unreasonable risk, or
 - (5) demonstrates conduct or condition which renders him or her unable or unwilling to give a child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provides nurturing and protection adequate to meet the child's physical, emotional and mental health. The determination of parental unfitness or unsuitability pursuant to this subparagraph shall not be that which is equivalent for the termination of parental rights.

E. 1. The district courts are 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 the child and the venue of such action shall be in the county of the residence of such person or parent.

2. When a grandparent of a child has been granted visitation rights pursuant to this section and those rights are unreasonably denied or otherwise unreasonably interfered with by any parent of the child, the grandparent may file with the court a motion for enforcement of visitation rights. Upon filing of the motion, the court shall set an initial hearing on the motion. At the initial hearing, the court shall direct mediation and set a hearing on the merits of the motion.

3. After completion of any mediation pursuant to paragraph 2 of this subsection, the mediator shall submit the record of mediation termination and a summary of the parties' agreement, if any, to the court. Upon receipt of the record of mediation termination, the court shall enter an order in accordance with the parties' agreement, if any.

4. Notice of a hearing pursuant to paragraph 2 or 3 of this subsection shall be given to the parties at their last-known address or as otherwise ordered by the court, at least ten (10) days prior to the date set by the court for hearing on the motion. Provided, the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances.

5. Appearance at any court hearing pursuant to this subsection shall be a waiver of the notice requirements prior to such hearing.

6. If the court finds that visitation rights of the grandparent have been unreasonably denied or otherwise unreasonably interfered with by the parent, the court shall enter an order providing for one or more of the following:

a. a specific visitation schedule,

b. compensating visitation time for the visitation denied or otherwise interfered with, which time may be of the same type as the visitation denied or otherwise interfered with, including but not limited to holiday, weekday, weekend, summer, and may be at the convenience of the grandparent,

c. posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights,

d. assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation rights against the parent, or

e. any other remedy the court considers appropriate.

7. If the court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the grandparent, the court may assess reasonable attorney fees, mediation costs, and court costs against the grandparent.

F. In addition to any other remedy authorized by this section or otherwise provided by law, any party violating an order of the court made pursuant to this section, upon conviction thereof, shall be guilty of contempt of court.

G. 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.

H. In any action for grandparental visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

I. For the purposes of this section, the term "grandparent" shall include "great-grandparent".

Comment:

This section ought to be moved to Title 43. I think it would be best if all statutes governing private actions were removed from Title 10. Most private attorneys would look for this statute among those that govern divorce.

~~§ 5A. Visitation rights of siblings~~

~~A. Upon the death of a parent of an unmarried minor child, a parent of the unmarried minor child or a parent of a minor sibling of the unmarried minor child may file a verified petition to commence an action requesting rights of visitation between the siblings. The court may award reasonable rights of visitation between the siblings if the court determines that visitation is in the best interests of the siblings.~~

~~B. In determining whether visitation is in the best interests of the siblings, the court shall consider:~~

- ~~1. The willingness of the parents of the siblings to encourage or maintain a relationship between the siblings;~~
- ~~2. The length and quality of the relationship between the siblings including, but not limited to, whether the siblings previously resided together in the same household;~~
- ~~3. The time which has elapsed since the siblings last had contact;~~
- ~~4. The preference of the siblings, if they are of sufficient maturity to express a preference;~~
- ~~5. The effect that visitation will have on the relationship between the siblings and their parents;~~
- ~~6. The mental and physical health of the siblings; and~~
- ~~7. All other factors appropriate to the particular circumstances.~~

~~C. The district courts are vested with jurisdiction to issue orders granting visitation between siblings and to enforce these orders.~~

~~D. Notice as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be given to all parents of the siblings.~~

~~E. Venue of an action under this section shall be in the county where the siblings reside or, if the siblings reside in different counties, in the county where the respondent resides.~~

~~F. The court may determine the location for visitation ordered pursuant to this section and require any transportation costs or other costs arising from visitation to be paid by a parent or parents of the siblings as the court deems equitable.~~

~~G. Any visitation rights granted pursuant to this section before the adoption of a sibling shall automatically terminate if the sibling is adopted by a person other than a stepparent or grandparent of the sibling.~~

~~H. In any action for sibling visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.~~

~~I. As used in this section:~~

- ~~1. "Sibling" means sister, brother, stepsister, stepbrother, halfsister, halfbrother, adopted sister, or adopted brother; and~~
- ~~2. "Parent" means biological parent, stepparent, adoptive parent, or legal guardian of a minor.~~

Comment:

This statute is clearly unconstitutional following the United States Supreme Court's decision in Troxel v. Granville, 530 U.S. 57 (2000). It does not contain a preference for the correctness of the parent's decision regarding visitation. Nor does it contain a provision that the correctness of the parent's decision can only be overcome by a showing of harm to the child, which is required by the decisions of the Oklahoma Supreme Court. See e.g., Neal v. Lee, 2000 OK 90, 14 P.3d 547. I think therefore the statute should be eliminated. Should the legislature wish to retain the concept of sibling visitation it can rewrite the statute to correct its constitutional infirmities. In any event, if it is rewritten, it should be moved to Title 43.

~~§ 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.~~

Comment:

This statute which should be eliminated. It has no case construction. To the extent that it appears to indicate that the test to determine whether custody should be granted to a third party instead of the surviving parent, the statute is inconsistent with 10 O.S. §21.1. It also is contrary to Oklahoma Supreme Court cases which hold that upon the death of the custodial parent, the Oklahoma Constitution requires that custody be awarded to the surviving parent, unless that parent is found to be affirmatively unfit. See e.g., Grover v. Phillips, 1984 OK 20, 681 P.2d 81.

§ 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.

Comment:

This statute needs to be retained. It is extremely useful in that it provides guidance for school officials and health care providers. However, it probably ought to be moved from Title 10. It may be more appropriate in Title 43, although there are other possibilities.

§ 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.~~

Comment:

This statute must be deleted. If it actually meant what it says, it is an unconstitutional attempt at gender discrimination. Actually, the Court of Civil Appeals has indicated that it only applies until such time as a parentage action is filed and the court can determine custody and access. See e.g., State ex rel. Dept. of Human Services ex rel. Smith v. Vigil, 2003 OK CIV APP 63, 74 P.3d 608. ("Section 6 applies so long as the child's father is not involved. When the father and his parental rights are in issue, § 6 no longer is controlling."); Department of Human Services ex rel. Martin v. Chronister, 1997 OK CIV APP 50, 74 P.3d 608; Miles v. Young, 1991 OK CIV APP 101, 818 P.2d 1258; Therefore it is confusing to attorneys who are not familiar with it.

§ 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, the State of Oklahoma nor any of its agencies, boards, commission 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.

Comment

~~This statute should also be eliminated. On its face it is fairly harmless, but it is also meaningless. There are no penalties attached to the use of the words "illegitimate" or "bastard." At some level it may well be unconstitutional as a restriction on free speech.~~

§ 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.~~

Comment

This is also a section of the old Dakotan Field Code that does nothing more than restate the common law. It should be eliminated.

§ 8. Parent without control over child's property

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

See the comment to §7.

Comment [CO1]: Editor's Note: Committee agrees this section is fairly harmless, however, research shows the terms "bastard" and "illegitimate" as highly prejudicial, judgmental, and reflective of the time where these kids were given absolutely no legal rights. The terms have been described as "cruel." Therefore, many states have eliminated these terms from their statutes – and Oklahoma has followed suit. Committee wants to keep this statute "as is".

§ 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 any grandparent on the child's behalf, or by its relatives within the third degree of consanguinity or affinity, or by the officers of the poor where the child resides or by any foster parent of the child or any person who has been a foster parent of the child; 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.~~

Comment

This statute is a mischief-maker and ought to be eliminated. Although this statute has been in existence since statehood, its exact meaning remains obscure. In *Lively v. Lively*, 1993 OK CIV APP 62 ,853 P.2d 787.(Released for Publication by the Supreme Court), the court noted that the statute, although dormant for many years, had received new life when the legislature amended it in 1991 to include grandparents and foster parents as persons who may bring the action. This indicated to the court that the statute should be used as the basis for third-party custody claims and reversed a trial court determination that grandparents could not bring a custody action under this section.

There are substantial interpretative problems with this section. Although the court authorized the use of the statute in *Lively* as a procedural vehicle for a third-party custody action, it's language is susceptible to being interpreted as a private action for termination of parental rights. However, in *Maupin v. Hasty*, 2000 OK CIV APP 16, 996 P.2d 468. the Court of Civil Appeals held that this statute could not be used to effectuate a private termination of parental rights. This seems logical because if the statute were so construed it would raise substantial issues concerning its relationship to the comparable provisions in the Children's Code, as well as to the standards for an adoption without consent in the Adoption Code. Compare 10 O.S. §7006-1.1 (termination of parental rights) and 10 O.S. §10 O.S. §7505-4.1 et seq. There is also an issue as to whether a successful action under this section has the result of emancipating the child. If so, there is an issue as to the relationship between this section and 10 O.S. §91 which deal with emancipation.

The court in *Lively* did not give any interpretation of the phrase "abuse of parental authority." However, in *Maupin*, the court, in dicta, noted that the statute refers to "abuse of authority" and not "neglect of duty." Therefore, in the court's opinion, a failure to pay child support or to visit the child could not amount to "abuse of authority," although it might show parental neglect. Given that parental neglect can form the basis of an action in juvenile court to declare the child deprived which could lead to a determination of parental rights, it appears that there is still considerable confusion as to the content of the phrase "abuse of authority."

Given its confusing nature and the availability of other procedures for third-party custody actions, it seems it adds little to the law and contributes only substantial confusion.

§ 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.*

Comment

See the comment to section 7. Problems of emancipation are dealt with elsewhere in the statutes. Problems of attaining the age of majority in relationship to custody and child support are already dealt with in Title 43.

§ 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 township or county, and leaving an estate sufficient for its support, the officers of the poor, in the name of the township or county respectively, 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.

Comment

See the comment to section 7. This one is really obsolete. I do not believe Oklahoma ever had an official call the "officer of the poor."

§ 12. Maintenance of poor persons by parents—Limitations—Promise of adult child to pay for necessities

It is the duty of the father and the mother of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. Provided, that the liability of a parent to an institution, nursing home, intermediate care facility, or other resident facility for the care or maintenance of any such poor person shall not be excessive and shall not cause undue financial hardship upon said parent. Provided further, that the provisions of this section shall not apply to charges for care provided by institutions of the Department of Mental Health and Substance Abuse Services or to charges for care provided by Department of Mental Health and Substance Abuse Services outpatient facilities, including the alcohol and drug programs. The promise of an adult child to pay for necessities previously furnished to a parent is binding.

Comment

See the comment to section 7. The entire statute probably ought to be eliminated. To the extent that this statute could be read to require parents to support handicapped children, the statute has been replaced by the provisions of Title 43, section 112.1A. Therefore the first sentence of the section is obsolete. The two provided for clauses should be codified in different chapters of the statutes, if indeed it is thought they should be kept. The last sentence seems to deal with the support of a parent by a child. That is a relatively controversial issue in the United States. The whole idea probably should be rethought by the legislature and if this provision is kept it probably should be

moved to Title 43 near section 209.1 where the necessities doctrine between spouses is codified.

§ 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.

Comment

This statute may be helpful and probably should be kept. It codifies the common law. However, it only applies to the intact family. Child support for divorced, or separated families is governed by the Child Support Guidelines. The statute should be moved near to Title 43 section 209.1 where the necessities doctrine between spouses is codified.

§ 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.*~~

Comment

See the comment to Section 7. Another obsolete statute that should be eliminated.

§ 15. Support of stepchildren

~~*A husband step-parent is not bound required to maintain his or her wife's spouse's children by a former husband from a prior relationship. 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.*~~

Comment:

This statute is helpful since it restates the common law rule that step-parents are not responsible for the support of step-children. It does require some slight amendments to clarify the language and to eliminate obsolete language. The issue of whether step-parents can seek custody of or visitation with step-children is governed by section 21.1 and therefore does not have to be addressed here. Whether step-parents should be responsible for the support of their step-children following their divorce from the child's parents is a topic that is beyond the scope of the Commission's responsibility. However, like other statutes in this section that are still useful, it should be moved to Title 43 near the Child Support Guidelines.

~~§ 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.~~

Comment:

Whatever utility this statute once had it has been superceded by the provisions in Title 43 section 112.1A regarding the support of disabled adult "children" by their parents. It therefore should be eliminated.

~~§ 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.~~

Comment

This statute has not been subjected to any construction since statehood. It appears to be a very early version of a provision allowing the voluntary relinquishment of parental rights and responsibility. That subject should be covered by the Children's Code. This t his statutes adds little, it should be deleted.

~~§ 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 Section 83 of Title 12 of the Oklahoma Statutes.~~

Comment:

This statute was added in 1977. There are no cases construing the statute. However, it still retains some utility. However, it should be moved out of Title 10, perhaps to Title 12.

~~§ 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.~~

Comment:

See the comment to section 7. This is another obsolete statute that should be deleted.

§ 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.

Comment:

This statute needs to be kept. It was the basis for the Supreme Court's opinion in Kaiser v. Kaiser, 2001 OK 30, 23 P.3d 278. However, it should be moved to precede the relocation statute at 43 O.S. 112.3.

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

Neither parent or child is answerable, as such, for the act of the other, except as otherwise specifically provided by law.

Comment:

This statute is useful still, since it deals with problems of respondeat superior in tort cases. However, it probably should be moved to some other title where it is more appropriate, perhaps Title 76.

~~§ 21.1. Custody or guardianship—Order of preference—Death of custodial parent—Preference of child—Evidence of domestic abuse—Registered sex offenders~~

~~A. Except as otherwise provided by this section, custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:~~

- ~~1. A parent or to both parents jointly;~~
- ~~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 including but not limited to a foster parent; 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. In addition to subsection D of this section, when a parent having custody of a child becomes deceased or when custody of a child is judicially removed from the parent having custody of the child, the court may only deny the noncustodial parent custody of the child or guardianship of the child if:~~

- ~~1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:~~

~~(1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or~~

~~(2) according to such parent's financial ability to contribute to the child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and~~

~~b. The denial of custody or guardianship is in the best interest of the child;~~

~~2. The noncustodial parent has abandoned the child as such term is defined by Section 7006-1.1 of this title;~~

~~3. The parental rights of the noncustodial parent have been terminated;~~

~~4. The noncustodial parent has been convicted of any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;~~

~~5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code [FN1] and the noncustodial parent has not successfully completed a service or treatment plan if required by the court; or~~

~~6. 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 shall consider the preference of the child in awarding custody of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes.~~

~~D. 1. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody or who has custody of, guardianship of or visitation with a child:~~

~~a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act [FN2] or any similar act in any other state;~~

~~b. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act [FN3] or in Section 582 of Title 57 of the Oklahoma Statutes;~~

~~c. is an alcohol dependent person or a drug dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;~~

~~d. has been convicted of domestic abuse within the past five (5) years;~~

~~e. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;~~

~~f. is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or~~

~~g. is residing with a person who has been convicted of domestic abuse within the past five (5) years.~~

~~2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, or guardianship granted to:~~

~~a. a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;~~

~~b. a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;~~

~~c. an alcohol dependent person or a drug dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;~~

~~d. a person who has been convicted of domestic abuse within the past five (5) years;~~

~~e. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;~~
~~f. a person who is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or~~
~~g. a person who is residing with a person who has been convicted of domestic abuse within the past five (5) years.~~
~~3. Custody of, guardianship of, or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm.~~
~~E. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.~~
~~F. For purposes of this section:~~
~~1. "Alcohol dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;~~
~~2. "Domestic abuse" has the same meaning as such term is defined in Section 60.1 of Title 22 of the Oklahoma Statutes;~~
~~3. "Drug dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and~~
~~4. "Supervised visitation" means a program established pursuant to Section 5 of this act.~~

Comment:

This statute is a mess. The problem is that at the beginning this was a statute designed only to replace the "tender years" presumption in private custody cases. Then, with the addition of section B, now C, it became a partial third-party custody statute. Finally, the legislature has added problems of juvenile placement and made parts of the Children's Code dependent on this section.

The Commission discussed this section and concluded that the statute should be totally rewritten into two sections. That part of the statute that concerns child custody in private actions should be rewritten and codified in Title 43. That part of the statute which concerns placement of children under the Children's Code should be rewritten and codified in the Children's Code.

NEW LAW: The following statute rewrites the custody provisions of 21.1:

- A. Custody or guardianship of a child may be awarded to:
 1. A parent or to both parents jointly;
 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 including but not limited to a foster parent; 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.

Comment [DoHS2]: Editor's Note: Dr. Spector's proposed language to re-write §21.1 10-16-08

B. In applying section A, court shall award custody or guardianship of a child to a parent, unless a nonparent proves by clear and convincing evidence that:

1. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the commencement of the custody or guardianship proceeding, the parent has willfully failed, refused, or neglected to contribute to the support of the child:

a. in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to the financial ability of the parent to contribute to the support of the child if no provision for support is entered by a court of competent jurisdiction, or an order of modification subsequent thereto.

c. For purposes of this paragraph, incidental or token financial contributions shall not be considered in establishing whether a parent has satisfied his or her obligation under subparagraphs a and b of this subsection.

2. a. The child has been left in the physical custody of a nonparent by a parent or parents of the child for one (1) year or more, excluding parents on active duty in the military, and

b. the parent or parents have not maintained regular visitation or communication with the child.

c. For purposes of this paragraph, incidental or token visits or communications shall not be considered in determining whether a parent or parents have regularly maintained visitation or communication.

3. a. The court finds that the parent is affirmatively unfit. There shall be a rebuttable presumption that a parent is affirmatively unfit if the parent:

1. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,

2. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,

4. has been convicted of domestic abuse within the past five (5) years,

5. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,

6. is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or

7. is residing with a person who has been convicted of domestic abuse within the past five (5) years.

C. Subject to subsection D, a custody determination made in accordance with subsection B of this section shall not be modified unless the person seeking the modification proves that:

1. Since the making of the order sought to be modified, there has been a permanent, material, and substantial change of conditions that directly affects the best interests of the child, and
2. That as a result of such change of circumstances the child would be substantially better off with regard to its temporal, mental, and moral welfare if custody were modified.

D. If the custody determination made in accordance with subsection B indicates that it is temporary, the determination may be modified upon a showing that the conditions which led to the custody or guardianship determination no longer exist.

Comment

This new version of 21.1 restates the third party custody provisions of the current statute. It should be codified in Title 43. There are some changes:

1. The language of subsection A has been cleaned up to eliminate language that has confused the courts.
2. In subsection B the failure to pay child support and the abandonment provisions have been kept. The reference to the children's code has been eliminated in favor of setting out the definition in the statute itself. The term affirmatively unfit has been used since that is the language the court has used to determine when custody should be granted to a third party.
3. The current statute does not deal with modification of third-party custody. Notions of stability of the child's environment indicate that the standard used in modification of custody cases between parents should apply to third-party cases.
4. The sections on child abuse and drug dependency have been retained to reflect current legislative policy.

§ 21.2. Definitions

~~For purposes of Sections 21.3 and 21.4 of this title 1. "Permanent care and custody" means the right and responsibility to exercise continuing general supervision of a child and includes, but is not limited to, the right and responsibility to protect, educate, nurture and to provide the child with food, clothing, shelter, medical care and a supportive environment;~~

~~2. "Abandonment" includes, but is not limited to, a state or condition in which the parent of a child:~~

- ~~a. (1) if the child is twenty four (24) months or less, has failed to establish and/or maintain a substantial and positive relationship with the child through visitation or communication with the child placed in the home of a relative related to the child within the third degree for at least six (6) months after placement in the home of such relative, or~~
- ~~(2) if the child is over twenty four (24) months of age, has failed to establish and/or maintain a substantial and positive relationship with the child through visitation or communication with the child for a period of twelve (12) months out of the last fourteen (14) months while in the home of a relative related to the child within the third degree.~~

~~In any case where a father or a putative father of an infant born out of wedlock claims that prior to any action filed to reclaim or recover the child pursuant to Section 21.3 of this title or prior to receipt of notice pursuant to Section 21.5 of this title, he had been denied knowledge of the child by the mother and/or the custodian of the child, such father or putative father shall prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered the child and made sufficient attempts to establish and/or maintain a substantial and positive relationship with the child prior to the filing of such action or the receipt of such notice.~~

~~In any case where a parent of a child claims that prior to the filing of any action to reclaim or recover a child pursuant to Section 21.3 of this title or prior to receipt of notice pursuant to Section 21.5 of this title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the child by the custodian of the child, such parent shall prove to the satisfaction of the court that he or she made sufficient attempts to establish and/or maintain a substantial and positive relationship with the child prior to the filing of such action or the receipt of such notice.~~

~~Infrequent or token visits or communications shall not be sufficient to establish and/or maintain a substantial and positive relationship with the child, or~~
~~b. has for any twelve (12) months out of the last fourteen (14) months of placement of the child in the home of a relative related to the child within the third degree, failed, refused or neglected to contribute to the support of such child:~~
~~(1) in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or~~
~~(2) according to such parent's financial ability to contribute to such child's support if no provision for support is provided in an order.~~

~~In any case where a parent of a child claims that prior to any action filed to reclaim or recover a child pursuant to Section 21.3 of this title or the receipt of notice pursuant to Section 21.5 of this title, the parent had been denied the opportunity to support or contribute to the support of his or her child and otherwise to exercise parental rights and responsibilities with regard to the child as required by this subparagraph, by the custodian of the child, such parent shall prove to the satisfaction of the court that he or she made sufficient attempts to support or contribute to the support of his or her child and to otherwise exercise parental rights and responsibilities as required by this subparagraph prior to the filing of such action or the receipt of such notice.~~

~~Infrequent or token payments or payments or provisions by a third party shall not be construed or considered in establishing whether a parent has supported or contributed to the support of the child as required by this subparagraph; and~~
~~3. "Establish and/or maintain a substantial and positive relationship" includes, but is not limited to:~~

- ~~a. frequent and regular contact with the child through frequent and regular visitation and/or frequent and regular communication to or with the child, and~~
- ~~b. the exercise of parental rights and responsibilities.~~

§ 21.3. Right to custody

~~A. No person, other than an adult relative related to the child within the third degree, may accept the permanent care and custody of a child, except in~~

~~accordance with a decree of a court of competent jurisdiction or the Oklahoma Children's Code, the Oklahoma Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.~~

~~B. An adult relative related to a child within the third degree may accept the permanent care and custody of the child:~~

~~1. Pursuant to a written relinquishment by a parent or parents of a child acknowledged before a court of competent jurisdiction which identifies the child or children relinquished;~~

~~2. In accordance with the provisions of the Oklahoma Children's Code, the Oklahoma Guardianship and Conservatorship Act, Section 3 of this act or the Oklahoma Adoption Code; or~~

~~3. Without a court order and by operation of law, if the child has been abandoned by a parent or parents of a child in the physical custody of such relative pursuant to the provisions of this section.~~

~~C. 1. A child who has been abandoned in the physical custody of such relative by a parent or parents of the child may not be reclaimed or recovered by the parent or parents who abandoned the child except through order of a court of competent jurisdiction or by release of the child by such relative.~~

~~2. Upon any action to determine custody of the child pursuant to the provisions of this subsection, the court shall base its findings and determination of custody on the best interests of the child and:~~

~~a. the duration of the abandonment and integration of the child into the home of the relative;~~

~~b. the preference of the child if the child is determined to be of sufficient maturity to express a preference;~~

~~c. the mental and physical health of the child, and~~

~~d. such other factors as are necessary in the particular circumstances.~~

~~3. During the pendency of any action to determine the custody of a child pursuant to this subsection, unless it is determined not to be in the best interests of the child, the child shall remain in the custody of the relative related to the child within the third degree.~~

~~4. If the court orders the child be returned to the parents of the child, the court may provide for a transitional period for the return in the best interests of the child.~~

~~D. An adult relative related to the child within the third degree accepting permanent care and custody of a child pursuant to this section shall have the same authority as a parent to consent on behalf of a child or on behalf of a parent of the child in all cases except that such relative may not consent to an adoption of the child.~~

~~E. The provisions of this section shall not apply to the acceptance of the permanent care and custody of a child by one parent of the child from the other parent of the child.~~

~~§ 21.4. Authority to surrender, assign, relinquish or otherwise transfer~~

~~A. No person may surrender, assign, permanently relinquish, or otherwise transfer to another the person's rights and duties with respect to the permanent care and custody of a child, other than to an adult relative related to the child within the third degree, except in accordance with an order of the court of competent jurisdiction~~

~~or pursuant to the Oklahoma Children's Code, the Oklahoma Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.~~

~~B. A parent or parents of a child may surrender, assign, permanently relinquish or otherwise transfer such parent's rights and duties with respect to the permanent care and custody of a child to an adult relative of the child within the third degree:~~

~~1. Pursuant to a written relinquishment acknowledged before a court of competent jurisdiction which identifies the child or children relinquished;~~

~~2. In accordance with the provisions of the Oklahoma Children's Code, the Oklahoma Guardianship and Conservatorship Act, Section 3 of this act or the Oklahoma Adoption Code; or~~

~~3. Without a court order and by operation of law, by abandoning the child in the physical custody of such relative pursuant to the provisions of this section.~~

~~C. 1. A child who has been abandoned in the physical custody of such relative may not be reclaimed or recovered by the parent or parents who abandoned the child except through order of a court of competent jurisdiction or by release of the child by such relative.~~

~~2. Upon any action to determine custody of the child pursuant to the provisions of this subsection, the court shall base its findings and determination of custody on the best interests of the child and:~~

~~a. the duration of the abandonment and integration of the child into the home of the relative;~~

~~b. the preference of the child if the child is determined to be of sufficient maturity to express a preference;~~

~~c. the mental and physical health of the child, and~~

~~d. such other factors as are necessary in the particular circumstances.~~

~~3. During the pendency of any action to determine the custody of a child pursuant to this subsection, unless it is determined not to be in the best interests of the child, the child shall remain in the custody of the relative related to the child within the third degree.~~

~~4. If the court orders the child be returned to the parents of the child, the court may provide for a transitional period for the return in the best interests of the child.~~

~~D. An adult relative related to the child within the third degree accepting permanent care and custody of a child pursuant to this section shall have the same authority as a parent to consent on behalf of a child or on behalf of a parent of the child in all cases except that such relative may not consent to an adoption of the child.~~

~~E. The provisions of this section shall not apply to the surrender, assignment, relinquishment, or other transfer of a child by one parent of the child to the other parent of the child.~~

§21.5. Permanent custody to adult relative within third degree

~~1. A judge of a district court may order a child's permanent care and custody transferred to an adult relative of the child within the third degree pursuant to the provisions of this subsection, upon the written consent of both parents of the child or upon the consent of one parent only if:~~

~~a. the other parent is deceased;~~

~~b. the other parent has been determined by a court of law to be incompetent or~~

~~incapacitated;~~

~~c. the whereabouts or identity of the other parent is unknown. This fact shall be attested to by affidavit of the consenting parent;~~

~~d. the other parent, who is eighteen (18) years of age or older, has signed a statement consenting to the transfer, executed before a notary public;~~

~~e. the parental rights of the other parent have been terminated;~~

~~f. the other parent has been or is found by the court of law to be unfit or unable to exercise parental rights and responsibility for the child based upon situations enumerated in Section 7006-1.1 of Title 10 of the Oklahoma Statutes;~~

~~g. the other parent is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or~~

~~h. the other parent has abandoned the child as such term is defined by Section 21.2 of Title 10 of the Oklahoma Statutes, or is determined by the court to be otherwise unfit to assume custody of the child for any other reason.~~

~~2. To be appointed as a relative guardian for the child, an adult relative related to the child within the third degree must file a petition on a form developed pursuant to the provisions of this section with the judge.~~

~~3. Prior to the entry of an order transferring the custody of a child, the judge may receive a home study regarding the background and home of the prospective relative guardian by a person qualified by training and experience authorized by the court. If the judge does not receive a home study, a criminal background check and a child abuse registry check pursuant to Section 7505-5.3 of this title shall be conducted for the prospective relative guardian and other household members eighteen (18) years of age and older.~~

~~4. Upon the entry of a court order providing for the transfer of the permanent care and custody of a child, the order shall remain in full force and effect until:~~

~~a. the child reaches the age of eighteen (18) years;~~

~~b. the child marries or is legally emancipated;~~

~~c. the judge finds after evidentiary hearing:~~

~~(1) the child has been abused while in the care and custody of the relative, and~~

~~(2) it is in the best interests of the child that custody of the child be returned to a parent or the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code or this section;~~

~~d. the parent who consented to the transfer of the care and custody of the child petitions the judge for the recovery of the child and the judge finds after an evidentiary hearing that it is in the best interests of the child that custody of the~~

~~child be returned to the parents, or custody of the child be given to another person pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code, or the provisions of this section;~~

~~e. the attorney for the child or relative guardian petitions the judge for modification of the court order transferring care and custody and the court finds after an~~

~~evidentiary hearing that it is in the best interests of the child for the order to be modified and the child be returned to the parents or custody of the child be given to another person pursuant to the Oklahoma Guardianship and Conservatorship~~

~~Act, the Oklahoma Children's Code, or pursuant to the provisions of this section;~~

~~f. the child is adopted, or~~

~~g. the guardianship is otherwise terminated pursuant to Section 4-803 of Title 30 of the Oklahoma Statutes.~~

~~5. An order providing for the transfer of the permanent care and custody of a child:~~
~~a. shall require that the placement be reviewed within one (1) year after transfer and may require the person to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review;~~

~~b. shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child;~~

~~c. unless periodic reviews are required, may be closed by the judge, provided the order transferring the permanent care and custody of the child shall remain in full force and effect subject to the provisions of paragraph 4 of this subsection, and~~
~~d. shall include conditions for the care, treatment, education and welfare of the child.~~

~~6. A court order appointing an adult relative guardian shall award custody of the child to the relative guardian subject only to such parental rights and responsibilities as determined by the judge. The adult relative guardian of a child shall have the authority as specified by the order to consent on behalf of the child in all cases except that a relative guardian may not consent to an adoption of the child.~~

~~B. 1. A judge of a district court may order a child's permanent care and custody transferred to an adult relative guardian related to the child within the third degree without the consent of the parent or parents pursuant to the provisions of this subsection.~~

~~2. To be appointed as a relative guardian for the child, an adult relative related to the child within the third degree must file a petition on a form developed pursuant to the provisions of this section with the judge. The petition shall allege that:~~

~~a. a parent or the parents of the child have placed the child with the relative pursuant to Sections 21.3 and 21.4 of Title 10 of the Oklahoma Statutes and have abandoned the child;~~

~~b. the child is currently residing with the relative and there exists a loving and emotional tie between the child and the relative;~~

~~c. the parents of the child are presently and for the foreseeable future unable to provide proper adequate care for the child, are unavailable or their whereabouts are unknown;~~

~~d. the child has no assets or limited assets, and~~

~~e. it would be in the best interests of the child for the petition to be granted.~~

~~3. Prior to the entry of an order appointing an adult relative guardian, the court may receive a home study regarding the background and home of the prospective relative guardian by a person qualified by training and experience authorized by the court.~~

~~4. If the judge finds that the elements of the petition have been proven based on a preponderance of the evidence, the judge shall grant the petition.~~

~~5. An order appointing the adult relative related to the child within the third degree as a relative guardian shall award custody of the child to the relative. The relative guardian shall have the same authority as a parent to consent on behalf of a child in all cases, except that the relative guardian may not consent to an adoption of the child.~~

~~6. Upon the entry of an order and issuance of a relative guardian providing for the transfer of the permanent care and custody of a child to a relative related to the~~

~~child within the third degree, the court order shall remain in full force and effect until:~~

~~a. the child reaches the age of eighteen (18) years;~~

~~b. the child is married or is legally emancipated;~~

~~c. the judge finds after evidentiary hearing:~~

~~(1) the child has been abused while in the care and custody of the relative, and~~

~~(2) it is in the best interests of the child that custody of the child be returned to a parent or the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code or this section;~~

~~d. an attorney for the child or the relative petitions the judge for modification of the order transferring permanent care and custody to the relative and the judge finds after an evidentiary hearing that it is in the best interests of the child for the order to be modified and the child returned to the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code, or this section;~~

~~e. the child is adopted, or~~

~~f. the guardianship is otherwise terminated pursuant to Section 4-803 of Title 30 of the Oklahoma Statutes.~~

~~7. An order appointing a relative guardian:~~

~~a. shall require that the placement be reviewed within one (1) year after transfer and may require the relative guardian to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review;~~

~~b. shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, unless periodic reviews are required by the court;~~

~~c. unless periodic reviews are required, may be closed by the judge, provided the order transferring care and custody to a relative guardian shall remain in full force and effect subject to the provisions of paragraph 6 of this subsection, and~~

~~d. shall include conditions for the care, treatment, education and welfare of the child.~~

~~C. 1. Before making an appointment pursuant to this section, the court must cause notice of a hearing on the petition for appointment to be given in the form required by the court to the minor, if the minor has attained the age of fourteen (14) as of the date the petition is filed. The court shall also cause notice to be sent to the then-living parents of the minor.~~

~~2. a. Such notice shall be mailed to each person, entitled to notice pursuant to this subsection, at that person's address as last known to the petitioner, at least ten (10) days prior to the date set by the court for hearing on the petition. Provided the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances, and~~

~~b. If the identity or whereabouts of a parent is unknown, the court must determine whether the parent can be identified or located. Following an inquiry, if the court finds that the identity or whereabouts of the parent cannot be ascertained, and this fact is attested to by affidavit of the petitioner, it shall order that notice be given by publication. The notice shall be published once pursuant to the laws relating to the service of notice by publication in the county in which the petition for relative guardianship is filed, and the hearing shall not be held for at least fifteen (15) days after publication of the notice.~~

~~D. After a petition has been filed for a proceeding, pursuant to this section, the petitioner may request the court to issue a temporary order regarding child custody, child support, visitation or other relief proper in the circumstance.~~

~~E. The venue for a proceeding pursuant to this section is in the district court where the child resides. If the court finds that in the interest of justice a proceeding should be conducted in another court of this state, the court may transfer the proceeding to the other court.~~

~~F. 1. An appointment of a relative guardian made pursuant to this section is subject to only Article 1 of the Oklahoma Guardianship and Conservatorship Act and Sections 4-501, 4-503, 4-706, 4-707, 4-801, 4-802, 4-901 and 4-902 of Title 30 of the Oklahoma Statutes.~~

~~2. If the court determines that it is in the best interests of the child, the court may require the establishment of a guardianship or conservatorship pursuant to Title 30 of the Oklahoma Statutes.~~

~~3. The clerk of the district court in which the application for a relative guardianship is filed shall collect as court costs a fee of Fifty Dollars (\$50.00).~~

~~G. 1. Any order appointing a relative guardian of a minor pursuant to this section who has a parent living or legally responsible for the support of the child shall:~~

~~a. provide for the payment of child support by the parent; and~~

~~b. contain an income assignment provision pursuant to Section 115 of Title 43 of the Oklahoma Statutes.~~

~~2. The provisions of this subsection shall not apply to parents whose rights and responsibilities have been terminated to the child unless the termination order requires payment of child support.~~

~~H. The Administrative Office of the Courts shall prepare a handbook for distribution to the district courts for appointments made pursuant to this section.~~

~~The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to relative guardians made pursuant to this section. In addition, the Office of the Administrative Director of the Courts shall develop the forms and procedures necessary to effectuate this section. The Office of the Administrative Director of the Courts shall make such forms and handbook available to the public through the offices of the clerks of the district courts in this state, in the local offices of the Department of Human Services, and such other locations deemed necessary by the Administrator.~~

~~21.6. Relatives—Right to authorize medical care and dental care—Good faith reliance—Relative caregiver's authorization affidavit~~

~~A. Any relative related to a child within the third degree who has permanent care and custody of the child pursuant to Sections 21.2, 21.3 and 21.4 of Title 10 of the Oklahoma Statutes shall have the same rights to authorize medical care and dental care for the minor and to consent to school-related medical care on behalf of the minor that are given to legal guardians pursuant to Sections 21.5, 170.1 and 170.2 of Title 10 of the Oklahoma Statutes, or by the Oklahoma Guardianship and Conservatorship Act. A relative as specified by this subsection may complete a relative caregiver authorization affidavit.~~

~~B. 1. During the period of time after a child has been willfully left in the custody of a relative related to the child within the third degree, but prior to the time a child is deemed abandoned pursuant to Section 21.2 of Title 10 of the Oklahoma~~

~~Statutes, the relative shall have the same rights to authorize medical care and dental care for the minor and to consent to school-related medical care on behalf of the minor that are given pursuant to subsection A of this section if:~~

- ~~a. the relative completes the relative caregiver's authorization affidavit as required by this section;~~
- ~~b. the child is residing full-time with the relative and the relative contributes the major degree of support for the child, and~~
- ~~c. the parents have expressed a willful intent by words, actions or omissions not to return for the child, and the relative is unable to contact the parent, or the parent refuses to regain physical custody of the child after a written request to do so by the relative.~~

~~2. Until a child is deemed abandoned pursuant to Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, the decision of a relative to consent to or to refuse medical or dental care for a minor pursuant to this subsection shall be superseded by any contravening decision of the parent of the minor, provided the decision of the parent of the minor does not jeopardize the life, health, or safety of the minor.~~

~~3. The affidavit completed pursuant to this subsection shall not be valid for more than one (1) year after the date on which it is executed unless the relative has legal custody pursuant to subsection A of this section.~~

~~C. 1. A person who acts in good faith reliance on a relative caregiver's authorization affidavit authorized by this section to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, shall not be subject to criminal liability, civil liability to any person, or subject to professional disciplinary action if the applicable portions of the affidavit are completed.~~

~~2. A person who relies on the affidavit has no obligation to make any further inquiry or investigation.~~

~~3. Nothing in this section shall relieve any individual from liability for violations of other provisions of law.~~

~~4. If the minor stops residing with the relative, the relative shall notify any school, health care provider, or health care service plan that has been given a copy of the affidavit.~~

~~D. The relative caregiver's authorization affidavit shall be in substantially the following form:~~

~~Relative Caregiver's Authorization Affidavit~~

~~Use of this affidavit is authorized by Section 21.6 of Title 10 of the Oklahoma Statutes.~~

~~Instructions: Completion of items 1-5 and the signing of the affidavit are sufficient to authorize school-related medical care. Completion of items 6-9 is additionally required to authorize any other medical care. Print clearly.~~

~~The minor named below lives full-time in my home and I am 18 years of age or older.~~

~~1. Name of minor:-~~

~~2. Minor's birth date:-~~

~~3. My name (adult giving authorization):-~~

~~4. My home address: _____~~

~~5. () I am a grandparent, aunt, uncle, or other qualified relative of the minor (see end of this form for a definition of "qualified relative").~~

~~6. The child has been living in my home since _____~~

~~7. Check one or both (for example, if one parent was advised and the other cannot be located):~~

~~() The child has been left in my custody and I have advised the parent(s) or other person(s) having legal custody of the minor, in writing, of my intent to authorize medical care, and have received no objection.~~

~~() The child has been left in my custody and I am unable to contact or locate the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.~~

~~8. My date of birth: _____~~

~~9. My Oklahoma driver license or identification card number: _____~~

~~Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.~~

~~I declare under penalty of perjury under the laws of the State of Oklahoma that the foregoing is true and correct.~~

~~Dated: _____ Signed: _____~~

~~_____
Notary Stamp~~

Procedures:

~~1. The signature of the relative must be notarized.~~

~~2. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not necessarily mean that the caregiver has legal custody of the minor.~~

~~3. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.~~

~~4. Unless the relative has legal custody of the child pursuant to Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, this affidavit is not valid for more than one (1) year after the date on which it is executed but may be reexecuted.~~

Additional Information:

TO CAREGIVERS:

- ~~1. "Qualified relative" for purposes of item 5, means a spouse of the qualified relative, parent, grandparent, great-grandparent, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew.~~
- ~~2. The law requires a caregiver, who is not a qualified relative of a child, to notify the Department of Human Services that a child in the caregiver's care has been abandoned. If the caregiver wishes to continue to care for the child, the law further requires that the caregiver's home be approved as a foster home. A caregiver should direct any questions to the Department of Human Services.~~
- ~~3. If the child stops living with the caregiver, the caregiver is required to notify any school, health care provider or health care service plan to which an affidavit has been given that the child no longer resides with the caregiver.~~
- ~~4. If a caregiver does not have the information requested in item 9 (Oklahoma driver license or identification card), the caregiver must provide another form of identification, such as a social security number.~~

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

- ~~1. No person who acts in good faith reliance upon a caregiver's properly completed authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, shall be subject to criminal liability, civil liability to any person, or subject to professional disciplinary action for relying upon the affidavit to provide medical or dental care.~~
- ~~2. This affidavit does not confer dependency for health care coverage purposes.~~
- ~~E. Any person who willfully makes a statement in the relative caregiver's authorization affidavit which the person knows to be false shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment.~~
- ~~F. For purposes of this part:~~
 - ~~1. "Person" includes an individual, corporation, partnership, association, the state, or any city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity;~~
 - ~~2. "Relative" means a spouse of the relative, parent, grandparent, great-grandparent, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew; and~~
 - ~~3. "School-related medical care" means medical care that is required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations and medical examinations conducted in schools for pupils.~~

Comment

These section should be repealed. They appear to be duplicative of provisions in the Children's Code. They have received no case construction since they were adopted. To the extent anyone believes they should be retained, the provisions should be moved to the Children's Code.

§7209 (E)(F)(G)(H) & (I)(1) MOVED HERE TO BE A STAND ALONE STATUTE AS AMENDED.

Comment [DoHS3]: This part of 7209 was moved here from the new OCC to be a stand alone statute.

EA 1. Upon any voluntary out-of-home placement of a child by a parent into foster care with a child-placing agency, the child-placing agency shall conduct an assessment of the child in its custody which shall be designed to establish an appropriate plan for placement of the child. Following the assessment, the child-placing agency shall establish an individual treatment and service plan for the child. A copy of each plan shall be provided to the child if the child is twelve (12) years of age or older and to the child's parent or guardian. The plan shall at a minimum:

- a. be specific,
- b. be in writing,
- c. be prepared by the agency in conference with the child's parents,
- d. state appropriate deadlines,
- e. state specific goals for the treatment of the child,
- f. describe the conditions or circumstances causing the child to be placed in foster care,
- g. describe the services that are necessary to remedy and that have a reasonable expectation of remedying the conditions or circumstances causing the child to be placed in foster care,
- h. state to whom the services will be delivered and who will deliver the services, and
- i. prescribe the time the services are expected to begin and the time within which expected results can reasonably be accomplished.

2. The child shall receive a complete medical examination within thirty (30) days of placement in foster care.

~~F B.~~ The child may receive such further diagnosis and evaluation as is necessary to preserve the physical and mental well-being of the child.

~~G C.~~ Subsequent to initial placement, the child placed in foster placement shall have a medical examination, at periodic intervals, but not less than once each year.

~~H D.~~ Prior to any proposed counseling, testing or other treatment services, the court or child-placing agency shall first determine that the proposed services are necessary and appropriate.

~~I E.~~ 4. If the assessment and medical examination disclose no physical, mental or emotional reasons for therapeutic foster care, a child voluntarily placed with a child-placing agency shall be placed in a regular foster family home. If therapeutic foster care is required, the child may be placed only in foster homes that are certified as therapeutic foster homes pursuant to the Oklahoma Child Care Facilities Licensing Act.

§10-22.1. Legislative findings and intent – Foster care by grandparents or other relative.

A. 1. The Oklahoma Legislature recognizes that:

- a. children who have been abused, who are dependent or neglected, or whose parents, for whatever reason, may be unable or unwilling to provide care for their children, are best served when they can be cared for by grandparents or other suitable relatives instead of placing those children in foster care with the State of Oklahoma, and
- b. while grandparents or other relatives are often willing to provide for the care of children who can no longer remain with their parents, there may exist financial obstacles to the provision of such care, or there may be a need for other services to enable the children to remain with their grandparents or other relatives in order to prevent those children's entry into the foster care system.

2. It is the intent of the Oklahoma Legislature in enacting this section to:

- a. recognize family relationships in which a grandparent or other relative within the third degree of relationship to the child is the head of a household that includes a child otherwise at risk of foster care placement by the Department of ~~Human Services~~,
- b. enhance family preservation and stability by recognizing that most children in placements with grandparents and other relatives within the third degree of relationship to the child do not need intensive supervision of the placement by the courts or by the Department of ~~Human Services~~,
- c. provide additional placement options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement by the Department of ~~Human Services~~ because of abuse, abandonment, or neglect, but who may successfully be able to reside in the care of relatives within the third degree of relationship to the child, and
- d. reserve the limited casework and supervisory resources of the Department of ~~Human Services~~ and the courts expended to care for children in state custody for those cases in which children do not have the option for safe, stable care within their immediate family.

B. The Department of ~~Human Services~~ shall establish and operate a relative support program pursuant to eligibility guidelines established in this section and by rules of the Department promulgated thereto which will divert children from the foster care program operated by the Department of ~~Human Services~~. The relative support program shall provide assistance to relatives within the third degree of relationship to a child who are caring for the child on a full-time basis, regardless of whether there is a court order granting custody of the child to the relative.

C. Grandparents or other such relatives who qualify for and participate in the relative support program are not required to be certified as foster parents or to meet the foster care requirements but shall be capable of providing a physically safe environment and a stable, supportive home for the children under their care.

D. Upon request by grandparents or other relatives who are caring for a child on a full-time basis, the Department shall complete a needs assessment on such

grandparents or other relatives to determine the appropriate services and support needed by the child and the grandparents or other such relatives.

E. Within available funding specified by this section, the relative support program may provide grandparents or other suitable relatives with:

1. Case management services;
 2. Monthly stipends or other financial assistance, family support and preservation services;
 3. Flexible funds to enable the grandparents or other relatives to meet unusual or crisis expenditures, including but not limited to, making housing deposits, utility deposits, or to purchase beds, clothing and food;
 4. Subsidized child care and after school care;
 5. Respite care;
 6. Transportation;
 7. Counseling;
 8. Support groups;
 9. Assistance in accessing parental child support payments;
 10. Aid in accessing food stamps, Social Security and other public benefits;
 11. Information about legal options for relative caregivers;
 12. Assistance for establishing a relative guardianship or relative custodianship for the child;
 13. Available volunteer attorney services;
 14. Mediation/family group conferencing; and
 15. Community-based services and state or federal programs available to the child and relatives to support the child's safety, growth and health development.
- F. Children living with grandparents or other relatives within the third degree of relationship to the child who are receiving assistance pursuant to this section shall be eligible for Medicaid coverage.

G. Subject to availability of funding, and as may be permitted by federal law or regulations governing the Department of ~~Human Services~~ block grant for Temporary Assistance for Needy Families (TANF), the Department of ~~Human Services~~ is specifically authorized to provide funding assistance from such block grant or other available funds for the development and operation of the relative support program by providing available funds which are not otherwise committed to or necessary for the provision of the Statewide Temporary Assistance Responsibility System. In addition, the Department may use any other state, federal or private funds available to the Department for such purposes to implement the provisions of this section.

H. 1. In order to qualify for the receipt of any monthly stipend, the grandparent or other relative shall meet any eligibility criteria determined by the Department of ~~Human Services~~.

2. Within limits of available funding, monthly stipends may be paid to grandparents or other relatives with the third degree of relationship to the child who have physical full-time custody of a child who would be unable to serve in that capacity without a monthly stipend because of inadequate financial resources, thus exposing the child to the trauma of potential placement in a shelter or in foster care placement by the Department of ~~Human Services~~. The statewide

average monthly rate for children in the legal custody of grandparents or other relatives who are not certified as foster homes shall not exceed the cost of providing foster care.

I. Additional assistance may be made available to qualified grandparents or other relatives within the third degree of relationship and children, based upon specific needs of the grandparent or other relative of the child and the specific needs of the child. Such assistance shall also be subject to available funding.

J. The relative support program established by the Department pursuant to this section may receive referrals from district courts of this state, from social service or child advocate agencies, from any other agency of this state, or other states or federal programs. In addition, the relative support program may be accessed directly by the grandparents or other relatives of the affected children by application made to the Department of Human Services.

K. The Department of Human Services may provide any services necessary to effectuate the purposes of this section by contract with any person or with any public or private entity.

L. The provisions of this section shall also be available to a legal guardian of a child who is within the fifth degree of relation to the child.

M. The Department of Human Services shall, pursuant to the provisions of the Administrative Procedures Act, promulgate any rules necessary to implement the provisions of this section.

N. As a part of the relative support program, the Department shall develop, publish, and distribute an informational brochure for grandparents and other relatives who provide full-time care for children. The information provided under the program authorized by this section may include, but is not limited to, the following:

1. The benefits available to children and grandparents or other relatives pursuant to this section providing full-time care;
2. The procedures to access the relative support program;
3. A list of support groups and resources located throughout the state;
4. Such other information deemed necessary by the Department; and
5. The brochure may be distributed through municipal and district courts, hospitals, public health nurses, child protective services, medical professional offices, county health departments, elementary and secondary schools, senior citizens centers, public libraries, local, city, county and state offices and community action agencies selected by the Department.

O. The Department of Human Services shall submit a report of the outcomes associated with the relative support program established pursuant to this section to the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate on or before January 15, 2002.

§10-22.2. Short title – Purpose – Comprehensive strategic plan – Information database – Family resource assistance – Partnerships – Brochure.

A. This section shall be known and may be cited as the “Investing in Stronger Oklahoma Families Act”.

B. It is the intent of the Oklahoma Legislature in enacting the Investing in Stronger Oklahoma Families Act to provide assistance to guardians of children, adoptive parents and other “created families”, to assist such guardians, adoptive parents and families to assume permanent custody of children in need of safe and permanent homes, and to enhance family preservation and the stability of these homes.

C. For purposes of implementing the Investing in Stronger Oklahoma Families Act, the Department of Human Services shall collaborate with appropriate local, state and federal agencies and private entities to develop by December 31, 2001, a comprehensive strategic state plan for investing in stronger families.

D. The comprehensive strategic state plan shall:

1. Set a goal to annually increase the number of programs for “created families” which will increase safe and permanent homes for children who are not in the custody of the Department but unable to reside with their biological parents and encourage and preserve the adoption or guardianship of and other legal custody arrangements for such children;
2. Develop and implement a statewide public awareness campaign which will inform preadoptive homes, adoptive homes and other persons desiring to obtain guardianship or other legal custody of a child, of the programs, grants and other assistance available to them;
3. Identify public and private resources, both within the agencies subject to the provisions of this section and within the state and within the communities;
4. Provide for coordination and collaboration among related efforts and programs;
5. Provide for contracts or agreements with public and private entities for utilization of identifiable financial resources from federal, state, local and private resources and coordinate those resources to fund-related services; and
6. Apply for grants and matching monies to assist in the implementation of the Investing in Stronger Oklahoma Families Act including, but not limited to, funds derived from the “Respect Life - Support Adoption” license plates.

E. As part of the development and implementation of the comprehensive strategic plan, the Department shall, as funds are available and using existing available state resources, develop an information database consisting of data on existing programs serving families who have taken on the responsibility of providing children with safe and permanent homes. In developing the information database, the Department shall coordinate with the Children’s Coordinated Data System developed by the Oklahoma Commission on Children and Youth.

F. The Legislature hereby encourages the establishment of family resource assistance that links federal, state and local resources and programs and that creates collaborative and interorganizational partnerships between state

governmental agencies and private and nonprofit entities and attorneys. Such agencies and private and nonprofit entities shall include, but not be limited to:

1. The Department of Human Services;
2. The State Department of Education;
3. The Oklahoma Department of Career and Technology Education;
4. The Oklahoma Department of Commerce;
5. The Oklahoma Employment Security Commission;
6. The Oklahoma Health Care Authority;
7. The State Department of Health;
8. The Commission on Children and Youth;
9. The State Department of Mental Health and Substance Abuse Services;
10. The Oklahoma Department of Corrections;
11. The Oklahoma State Regents for Higher Education;
12. Community action agencies;
13. Local and municipal groups;
14. Substate planning groups;
15. Religious and charitable organizations;
16. Private child placement entities;
17. Public or private foundations; and
18. Representatives of the courts and attorneys who practice in adoption.

G. The Department shall enter into collaborative and interorganizational partnerships as necessary to provide assistance to guardians, adoptive parents and other "created families".

H. Within available funding specified by this section, the Department may provide created families with:

1. Case management services;
2. Flexible funds to enable the relatives, guardians, adoptive parents and other created families to meet unusual or crisis expenditures, including but not limited to, making housing deposits, utility deposits, or purchasing beds, clothing and food;
3. Child care and after school care;
4. Respite care;
5. Transportation;
6. Counseling;
7. Support groups;
8. Assistance in accessing parental child support payments;
9. Aid in accessing food stamps, Social Security and other public benefits;
10. Assistance for establishing a guardianship, adopting or obtaining custody of the child;
11. Available volunteer attorney services;
12. Mediation/family group conferencing; and
13. Community-based services and state or federal programs serving guardians of children, adoptive families and other created families.

I. The Department of Human Services may provide any services necessary to effectuate the purposes of this section by contract with any person or with any public or private entity.

J. The Department of Human Services shall, pursuant to the provisions of the Administrative Procedures Act, promulgate any rules necessary to implement the provisions of this section.

K. For purposes of the Investing in Stronger Oklahoma Families Act, the Department shall, from funds available, develop, publish, and distribute an informational brochure for guardians, adoptive parents and other created families who provide full-time care for children. The information provided under the program authorized by this section may include, but is not limited to, the following:

1. The benefits that may be available to children and created families pursuant to this section providing full-time care;
2. The procedures to access the created families program;
3. A list of support groups and resources located throughout the state; and
4. Such other information deemed necessary by the Department.

~~§10-23. National Youth Administration - Construction and operation of building jointly by county, city and fair association or board.~~

~~The board of county commissioners of any county, the county free fair association or county free fair board of such county, and any city in such county, are hereby authorized to purchase grounds for and to construct thereon, jointly, a building or buildings in conjunction with the National Youth Administration, and are further authorized to maintain and operate such building jointly, and may appropriate and expend such funds as are necessary therefor.~~

Comment [DoHS4]: Editor's Note:
This is an obsolete statute enacted in 1941 that is not believed to have current applicability to the Children's Code.
Judges Comments: 10-28-08

§10-24. Appointment of counsel - Responsibility of Oklahoma Indigent Defense System - Compensation.

A. 1. When it appears to the court that a minor or the minor's parent or legal guardian desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel.

2. In any case in which it appears to the court that there is a conflict of interest between a parent or legal guardian and a child so that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or legal guardian; provided, that in all counties having county indigent defenders, the county indigent defenders assume the duties of representation in proceedings such as above.

3. In no case shall the court appoint counsel to represent a grandparent or other relative of a minor, unless the grandparent or other relative is the duly appointed legal guardian of the minor or the court finds:

- a. that the grandparent or other relative is functioning as the guardian or relative custodian of the minor pursuant to Section 21.3 or 21.4 of this title, or
- b. that the appointment of counsel for the grandparent or other relative is in the best interests of the child.

4. The provisions of this subsection shall be for proceedings other than those provided pursuant to the Oklahoma Children's Code.

B. In all cases of juvenile delinquency proceedings and appeals, adult certification proceedings and appeals, reverse certification proceedings and appeals, youthful

offender proceedings and appeals and any other proceedings and appeals pursuant to the Oklahoma Juvenile Code, except mental health proceedings and appeals and in-need-of-supervision proceedings and appeals, other than in counties where the county indigent defenders are appointed, the court shall, where counsel is appointed and assigned, allow and direct to be paid by the Oklahoma Indigent Defense System, a reasonable and just compensation to the attorney or attorneys for such services as they may render. In all other cases pursuant to this title and in juvenile mental health proceedings and appeals and in-need-of-supervision proceedings and appeals, except in counties where county indigent defenders are appointed, the court shall, if counsel is appointed and assigned, allow and direct to be paid from the local court fund, a reasonable and just compensation to the attorney or attorneys for such services as they may render; provided that any attorney appointed pursuant to this subsection shall not be paid a sum in excess of One Hundred Dollars (\$100.00) for services rendered in preliminary proceedings, and such compensation shall not exceed Five Hundred Dollars (\$500.00) for services rendered during trial and not to exceed One Hundred Dollars (\$100.00) for services rendered at each subsequent post-disposition hearing.

§10-24.1. Appointment of volunteer attorneys for indigent children not entitled to representation by Indigent Defense System.

A. Effective July 1, 1996, except as provided in subsection B of this section, the duties and responsibilities for legal representation to indigent children who are subject to any proceeding or appeal provided for in the Oklahoma Children's Code, mental health proceeding and appeal, guardianship proceeding and appeal, private termination of parental rights proceeding and appeal, family law proceeding and appeal addressing custody or visitation and appeal, civil case in which the child is a defendant, criminal proceeding for a crime in which the child was a victim, and in-need-of-supervision proceeding shall no longer be provided by the Indigent Defense System, but shall be provided by volunteer attorneys appointed by the court pursuant to subsection H of Section 1355.8 of Title 22 of the Oklahoma Statutes.

~~B. The Indigent Defense System shall complete all cases provided for in subsection A of this section and appeals for all such cases for which the System has been appointed prior to July 1, 1996, as follows:~~

- ~~1. For providing counsel at the district court level through the disposition hearing if a hearing has not been held as of July 1, 1996, or through the next significant proceeding scheduled on or after July 1, 1996, if a disposition hearing has already been held; and~~
- ~~2. For any pending nondelinquency appeal for which the System was appointed on or prior to June 30, 1996, until a decision and mandate are issued by the appropriate appellate court.~~

Comment [DoHS5]: Editor's Note: This sub-section B is being deleted due to the consensus of the judges that after 12 years, OIDS has likely completed its work on the deprived cases in which it was appointed. Judges Comments 10-28-08

Juvenile Code

Summary of Revisions to Juvenile Code

§ 7301-1.1 (1-101)	Moved provisions.
1.2 (1-102)	***
1.3 (1-103)	<p>(a) New definition for “behavioral health.” (PAGE 3)</p> <p>(b) Modified the definition of “child” (PAGE 3) and “child in need of mental health and substance abuse treatment.” (PAGE 4)</p> <p>(c) Teen court and teen substance abuse schools are deleted since those specific programs have been subsumed into a provision for general “alternative diversion programs” in § 7303-4.6. (PAGE 7)</p> <p>(d) “Mental health facility” is changed to “behavioral health facility” to reflect current DMHSAS/federal terms for these services. (PAGE 9)</p> <p>(e) Definition of “responsible adult” is moved to the general definitions section. (PAGE 10)</p>
§ 7302-1.1 (7-101)	***
2.1 (7-201)	***
2.2 (7-202)	***
2.3 (7-203)	***
2.4 (7-204)	***
2.5 (7-205)	REPEAL – Department of Education confirms that there is no requirement for this report and no need for it.
3.1 (7-301)	<p>(a) Change C.3 to reflect change in Serious & Habitual Offender Act to Juvenile Offender Tracking Program.</p> <p>(b) Delete references to specific alternative diversion programs – provides for alternative diversion program that meet the requirements of 10 O.S. § 7303-4.6.</p>
3.2 (7-302)	***
3.3 (7-303)	***
3.4 (7-304)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

§ 7302-3.5 (7-305)	***
3.6 (7-306)	***
3.7 (7-307)	***
3.8 (7-308)	Deletes reference to what are now historic dates – no longer needed. Example: “On or before October 1, 1996....”
3.9 (7-309)	***
3.10 (7-310)	***
3.11 (7-311)	Deletes reference to what are now historic dates – no longer needed.
4.1 (7-401)	Deletes reference to what are now historic dates – no longer needed.
4.2 (7-402)	***
5.1 (7-501)	¶ A – Consolidates provisions related to intake, probation and parole services.
5.2 (7-502)	Change in section heading to include substance abuse services.
5.3 (7-503)	***
5.4 (7-504)	Clarifies that jurisdiction may be retained and extended beyond the 18th birthday.
6.1 (7-601)	***
6.2 (7-602)	***
6.3 (7-603)	Change from “mental health” to “behavioral health” to reflect DMHSAS and federal agency’s view of these services.
6.4 (7-604)	***
6.5 (7-605)	***
6.6 (7-606)	Deletes reference to what are now historic dates – no longer needed (COJC).
6.7 (7-607)	Deletes reference to what are now historic dates – no longer needed (RADER).
6.8 (7-608)	***
6.9 (7-609)	***
6.10 (7-610)	Changing name of Phil Smalley Children’s Unit of the Oklahoma Youth Center to Phil Smalley Center.
7.1 (7-701)	***
7.2 (7-702)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

§ 7302-7.3 (7-703)	For contracting purposes, eliminates reference to “eligible entities” as potential contractors, and instead, provides for agreements entered into pursuant to the Interlocal Cooperation Act or requests for proposals and deletes references to the Serious & Habitual Offender Act to reflect changes to that Act.
7.4 (7-704)	Cleans up the contracting procedures.
7.5 (7-705)	***
8.1 (7-801)	***
9.1 (7-901)	Changes name of Serious & Habitual Offender Act to Juvenile Offender Tracking Program.
9.2 (7-902)	Deletes provisions that have never been implemented. Retains provisions that relate to tracking juveniles through the system and exchanging information regarding said juveniles with entities comprising the juvenile justice system.
9.3 (7-903)	Moves provisions regarding use of detention beds to § 7304-1.1. Deletes provisions that have never been implemented or are redundant.
9.4 (7-904)	Changes program name.
9.6 (7-905)	Changes program name.
§ 7303-1.1 (2-101)	Change term “mental health treatment” to “behavioral health treatment” to reflect preferences of DMHSAS. Clarify that “the next two (2) judicial days” means the second judicial day. ACA requirement. Clarify that admissions to a behavioral health treatment facility is permissible pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.
1.2 (2-102A)	Consolidates all provisions relating to jurisdiction of delinquent and in-need-of-supervisions case.
2-102B	Consolidates provisions related to jurisdiction of municipalities.

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

<p>§ 7303-1.3 (2-103)</p>	<p>Deletes obsolete language related to contracting with the Supreme Court. All such matters are embodied in statutory provisions related to intake functions.</p> <p>Moves language related to petitions or filing petitions to another section.</p> <p>Provides for new section for informal adjustments at intake in lieu of filing a petition.</p>
<p>1.4 (2-104)</p>	<p>Moves language regarding filing of petition within a certain time to another section.</p> <p>(HEADING NEEDS TO BE AMENDED TO REFLECT THE MOVEMENT OF LANGUAGE REGARDING THE FILING OF THE PETITION TO ANOTHER SECTION.)</p>
<p>1.5 (2-105)</p>	<p>Petition language is moved to this section.</p>
<p>1.6 (2-106)</p>	<p>Summons language is consolidated and moved to this section.</p>
<p>1.7 (2-107)</p>	<p>Deletes redundant language regarding mental health evaluations and home studies.</p>
<p>2.1 (2-201)</p>	<p>Language related to summons is moved.</p>
<p>2.2 (2-202)</p>	<p>Language related to contempt of court for failure to appear is stricken.</p> <p>Language regarding warrants for parent's failure to appear is moved to another section.</p>
<p>3.1 (2-301)</p>	<p>Clarifies requirements for custodial interrogations.</p> <p>Redundant language regarding appointment of counsel is stricken.</p> <p>Redundant language regarding release of juvenile records is stricken.</p>
<p>4.1 (2-401)</p>	<p>***</p>

*** Revisions to this section of law are minimal. For example, section is renumbered, or "Department of Juvenile Justice" is stricken and "Office of Juvenile Affairs" is added, or both, "Department" is stricken and "Office" is added, etc.

<p>§ 7303-4.2 (2-402)</p>	<p>Clarifies that adjudicatory hearings are private unless opened by the court for good cause shown.</p> <p>Strikes language requiring second or subsequent hearings to be open to the public.</p> <p>Provisions related to witness fees, orders of adjudication, and dismissals are consolidated in this section.</p>
<p>4.3 (2-403)</p>	<p>Provisions not related to certification are moved to other appropriate sections.</p> <p>Clarifies language related to rights prior to and following certification.</p> <p>Clarifies that once certified as an adult, a youth will be an adult in all subsequent prosecutions. A conviction or deferral of judgment is not required.</p> <p>Provides for appeal of certification orders.</p>
<p>4.5 (2-404)</p>	<p>Deleted and moved to another section.</p>
<p>4.6 (2-405)</p>	<p>Language regarding adjudications is moved to another section.</p> <p>Deferral of delinquency is modified and deferral options expanded to give court greater discretion in structuring deferral agreements.</p>
<p>5.1 (2-501)</p>	<p>***</p>
<p>5.2 (2-502)</p>	<p>Language stricken that required justification for placement more than 40 miles from the home of the child.</p>
<p>5.3 (2-503)</p>	<p>Restitution language is stricken and new restitution language is added expanding conditions, providing for restitution hearings, procedures for payment, and consequences for failure to pay.</p> <p>Deletes language related to the Serious & Habitual Offender Act.</p> <p>Adds a dispositional option for participation in a drug court program.</p> <p>Language regarding effect of an arrest or adjudication is moved to this section.</p>

*** Revisions to this section of law are minimal. For example, section is renumbered, or "Department of Juvenile Justice" is stricken and "Office of Juvenile Affairs" is added, or both, "Department" is stricken and "Office" is added, etc.

§ 7303-5.4 (2-504)	Adds language permitting certain review hearings to be held via teleconference communication.
5.5 (2-505)	Provides for drug court programs as a dispositional option, as opposed to a deferred delinquency program. Moves procedural requirements to another section.
5.6 (2-506)	Clarifies that participation in drug court requires a crime or underlying cause of the crime to be related to alcohol or drug abuse. Provides for requirements for a written treatment plan. Clarifies that juvenile participants in drug court may be OJA custody kids. Provides that statements made by a participant or findings reports may not be used against the participant.
5.7	REPEAL
5.8 (2-507)	Stricken as no longer needed since drug court is a post-adjudication/disposition option.
5.9 (2-508)	Eligibility hearing is streamlined and simplified. Redundant language is stricken. Consequences for a parent's failure to accept personal jurisdiction of the court is provided. Provides for a juvenile's active participation in the program.
5.10 (2-509)	Requires program user fee not to exceed \$20.00.
6.1 (2-601)	Deletes unnecessary language and moves the provision regarding certification orders to Section 7303-4.3 (Certification).
6.2 (2-602)	Provides for all appeals of juvenile proceedings to be brought in the Court of Criminal Appeals. Moves certification language to Certification, Section 7303-4.3. Moves language regarding appellate decisions to this section.
6.3 (2-603)	Moves this section to the previous section.
7.1 (2-701)	STRICKEN – REDUNDANT.

*** Revisions to this section of law are minimal. For example, section is renumbered, or "Department of Juvenile Justice" is stricken and "Office of Juvenile Affairs" is added, or both, "Department" is stricken and "Office" is added, etc.

§ 7303-7.2 (2-702)	Moved to Section 7301-1.1.
7.3 (2-703)	Moved to Section 7303-4.2.C.
7.4 (2-704)	Provides for 10-day limit on detention of juveniles for contempt.
7.5 (2-705)	Language regarding authority of referees is modified. New language added. Provides for authority for referees in counties with population of 80,000, instead of 100,000.
7.6 (2-706)	Due process is provided to establish parental obligations to pay for expenses related to care and maintenance of the child. Other paragraphs modified to remove questionable provisions.
8.1 (2-801)	Removes language that might conflict with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. Language is unnecessary.
8.2 (2-802)	***
8.3 (2-803)	Language regarding placement of juveniles “in the nearest geographic proximity to the home of the child” is stricken.
8.4 (2-804)	Language regarding placement of children found to be in need of mental health and substance abuse treatment is stricken as redundant of language already in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.
8.5	REPEALED. Placement is already provided for in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.
8.6 (2-806)	***
§ 7304-1.1 (3-101)	Secure detention holding is reviewed every 15 days, instead of every 10 days. Deletes references to the Serious & Habitual Offender Act. Language from another section regarding detention is moved here.
1.2 (3-102)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

§ 7304-1.3 (3-103)	Changes dollar amounts for reimbursement for meals. Strikes obsolete language regarding DHS Standards and contracting procedures if the Board of Juvenile Affairs has not promulgated new standards or contracting procedures.
1.4 (3-104)	***
§ 7305-1.1 (4-101)	
§ 7305-1.1 (4-101)	Language regarding intake, probation and parole services moved to another section.
1.2 (4-102)	***
1.3 (4-103)	Language regarding confidential information moved.
1.4 (4-104)	***
1.5 (4-105)	***
1.6 (4-106)	***
1.7 (4-107)	Minimum salaries for Juvenile Bureau personnel is stricken. Judge's approval is deleted for reimbursement payments for certain staff for certain expenses.
1.8 (4-108)	***
1.9 (4-109)	***
1.10 (4-110)	***
§ 7306	
§ 7306	ARTICLE VI – NEEDS TO BE ARTICLE 5
1.1 (5-101)	***
2.1 (5-201)	***
2.2 (5-202)	***
2.3 (5-203)	***
2.4 (5-204)	Appointment of counsel provided.
2.5 (5-205)	***
2.6 (5-206)	Deletes charge for “use of a firearm while in the commission of a felony” and adds charge for child abuse.
2.7	REPEALED
2.7a (5-207)	***
2.8 (5-208)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

§ 7306-2.9 (5-209)	Changes “incarcerated in an institution operated by” DOC to “placed in the custody of” DOC.
2.10 (5-210)	Provides for certain review hearings to be conducted via teleconference communication.
2.10a (5-211)	***
2.11 (5-212)	Provides authority for OJA to seek appellate review of orders pertaining to the care and custody of youthful offenders.
2.12 (5-213)	***
2.13	REPEALED
3.1 (5-301)	***
§ 7307-1.1 (6-101)	Moved language. Definition of “social record” is changed to include all records confidential by law except records prepared by the agency for the court. Changes reference to the Serious & Habitual Offender Act.
1.2 (6-102)	Confidentiality of records is not required upon charging or certifying a juvenile as an adult or youthful offender. Strikes other exceptions to the confidentiality requirements. Changes references to the Serious & Habitual Offender Act. Moved language. (TEXT BOX SHOULD BE STRICKEN.)
6-102A	NEW SECTION prohibiting social records to be filed in court unless authorized by the court. If filed, social records are to be placed in an envelope in the court file.
1.3 (6-103)	Changes Serious & Habitual Offender Act reference. Changes to new language regarding tracking program.
1.4 (6-104)	***
1.5 (6-105)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

§ 7307-1.6 (6-106)	***
1.7 (6-107)	***
1.8 (6-108)	Clarifies what an “open” juvenile court record is and substitutes that language.
§ 7308-1.1 (8-101)	***
1.2 (8-102)	***
1.3 (8-103)	***
1.4 (8-104)	***
1.5 (8-105)	***
1.7 (8-106)	***
1.8 (8-107)	***
1.9 (8-108)	***
1.10 (8-109)	***
1.11 (8-110)	***
1.12 (8-111)	***
1.13 (8-112)	***
§ 7309-1.1 (9-101)	***
1.2 (9-102)	***
1.3 (9-103)	***
1.4 (9-104)	***
1.5 (9-105)	***
1.6 (9-106)	***
1.7 (9-107)	***
1.8 (9-108)	***
1.9 (9-109)	***
1.10 (9-110)	***
1.11 (9-111)	***
1.12 (9-112)	***
1.13 (9-113)	***
1.14 (9-114)	***

*** Revisions to this section of law are minimal. For example, section is renumbered, or “Department of Juvenile Justice” is stricken and “Office of Juvenile Affairs” is added, or both, “Department” is stricken and “Office” is added, etc.

OKLAHOMA STATUTES ANNOTATED
TITLE 10B ~~CHILDREN JUVENILE CODE~~
~~CHAPTER 73. OKLAHOMA JUVENILE CODE~~
ARTICLE ~~I~~ 1 -- GENERAL PROVISIONS

§ 1-101

~~§ 7301-1.1. Short title~~

A. Chapter 73 of Title 10 of the Oklahoma Statutes shall be known and may be cited as the "Oklahoma Juvenile Code".

B. All statutes hereinafter enacted and codified in Chapter 73 of Title 10 of the Oklahoma Statutes shall be considered and deemed part of the Oklahoma Juvenile Code.

C. Chapter, article and part captions are part of the Oklahoma Juvenile Code, but shall not be deemed to govern, limit or in any manner affect the scope, meaning or intent of the provisions of any article or part of this Code.

D. The district attorney shall prepare and prosecute any case or proceeding within the purview of the Oklahoma Juvenile Code.

Moved from 7303-7.2

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 1-102

§ ~~7301-1.2~~. Legislative intent--Construction of chapter--Purpose

It is the intent of the Legislature that Chapter 73 of this title shall be liberally construed, to the end that its purpose may be carried out.

The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency. This purpose should be pursued through means that are fair and just, that:

1. Recognize the unique characteristics and needs of juveniles;
2. Give juveniles access to opportunities for personal and social growth;
3. Maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior;
4. Provide a system for the rehabilitation and reintegration of juvenile delinquents into society;
5. Preserve and strengthen family ties whenever possible, including improvement of home environment;
6. Remove a juvenile from the custody of parents if the welfare and safety of the juvenile or the protection of the public would otherwise be endangered;
7. Secure for any juvenile removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile in becoming a responsible and productive member of society; and
8. Provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 1-103

§ 7301-1.3. Definitions

When used in the Oklahoma Juvenile Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Article III of the Oklahoma Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

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 Board of Juvenile Affairs and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. "Behavioral Health" means mental health, substance abuse or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment.

NEW by
DMHSAS

~~3. 4.~~ "Board" means the Board of Juvenile Affairs;

~~4. 5. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 7306-1.1 of this title and whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of this title, or any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree pursuant to subsection B of Section 7306-1.1 of this title or Section 7306-2.5 of this title, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of this title, and the imposition of judgment and sentence has been deferred after certification as an adult or any individual against whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of this title, any individual against whom the imposition of judgment and sentence has been deferred after certification as an adult pursuant to Section 7303-4.3 of this title, or any person fifteen (15) years of age or older and charged or certified as a youthful offender pursuant to the Youthful Offender Act; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 7306-1.1 of this title, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of this title, or any individual who is not convicted as a youthful offender pursuant to the~~

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~~Youthful Offender Act, shall continue to be subject to the jurisdiction of the juvenile court charged and convicted for any offense specified in the Youthful Offender Act or against whom judgment and sentence has been deferred for such offense; or any person who is certified as an adult pursuant to any certification procedure authorized in the Oklahoma Juvenile Code for any offense which results in a conviction or against whom judgment and sentence has been deferred for such offense;~~

~~5. 6.~~ "Child or juvenile in need of mental health and substance abuse treatment" means a juvenile in need of mental health or substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Children Minors Act;

CHANGES
by
DMHSAS.

~~6. 7.~~ "Child or juvenile in need of supervision" means a juvenile who:

- a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,
- b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,
- c. is willfully and voluntarily absent from school, as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the juvenile is subject to compulsory school attendance, or
- d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

~~7. 8.~~ "Community-based" means a facility, program or service located near the home or family of the juvenile, and programs of community prevention, diversion, 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, prevention and diversion programs, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

~~8. 9.~~ "Community intervention center" means a facility which serves as a short-term reception facility to receive and hold juveniles for an alleged violation of a municipal ordinance or state law, as provided for in subsection D of Section 7302-3.5 of this title;

~~9. 10.~~ "Core community-based" means the following community-based facilities, programs or services provided through contract with the Office of Juvenile Affairs as provided in Section 7302-3.6a of this title:

- a. screening, evaluation and assessment which includes a face-to-face screening and evaluation to establish problem identification and to determine the risk level of a child or adolescent and may result in clinical diagnosis or diagnostic impression,
- b. treatment planning which includes preparation of an individualized treatment plan which is usually done as part of the screening, evaluation and assessment,
- c. treatment plan reviewing which includes a comprehensive review and evaluation of the effectiveness of the treatment plan,
- d. individual counseling which includes face-to-face, one-on-one interaction between a counselor and a juvenile to promote emotional or psychological change to alleviate the issues, problems, and difficulties that led to a referral, including ongoing assessment of the status and response of the juvenile to treatment as well as psychoeducational intervention,
- e. group counseling which includes a method of treating a group of individuals using the interaction between a counselor and two or more juveniles and/or parents or guardians to promote positive emotional or behavioral change, not including social skills development or daily living skills,
- f. family counseling which includes a face-to-face interaction between a counselor and the family of the juvenile to facilitate emotional, psychological or behavior changes and promote successful communication and understanding,
- g. crisis intervention counseling which includes unanticipated, unscheduled face-to-face emergency intervention provided by a licensed level or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community,
- h. crisis intervention telephone support which includes supportive telephone assistance provided by a licensed level provider or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community,
- i. case management which includes planned linkage, advocacy and referral assistance provided in partnership with a client to support that client in self-sufficiency and community tenure,
- j. case management and home-based services which includes that part of case management services dedicated to travel for the purpose of linkage,

- advocacy and referral assistance and travel to provide counseling and support services to families of children as needed to support specific youth and families in self-sufficiency and community tenure,
- k. individual rehabilitative treatment which includes face-to-face service provided one-on-one by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices,
 - l. group rehabilitative treatment which includes face-to-face group services provided by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices,
 - m. community-based prevention services which include services delivered in an individual or group setting by a qualified provider designed to meet the services needs of a child or youth and family of the child or youth who has been referred because of identified problems in the family or community. The group prevention planned activities must be focused on reducing the risk that individuals will experience behavioral, substance abuse or delinquency-related problems. Appropriate curriculum-based group activities include, but are not limited to, First Offender groups, prevention and relationship enhancement groups, anger management groups, life skills groups, substance abuse education groups, smoking cessation groups, STD/HIV groups and parenting groups,
 - n. individual paraprofessional services which include services delineated in the treatment plan of the juvenile which are necessary for full integration of the juvenile into the home and community, but do not require a professional level of education and experience. Activities include assisting families with Medicaid applications, assisting with school and General Educational Development (GED) enrollment, assisting youth with independent living arrangements, providing assistance with educational problems and deficiencies, acting as a role model for youth while engaging them in community activities, assisting youth in seeking and obtaining employment, providing transportation for required appointments and activities, participating in recreational activities and accessing other required community support services necessary for full community integration and successful treatment,
 - o. tutoring which includes a tutor and student working together as a learning team to bring about overall academic success, improved self-esteem and increased independence as a learner for the student,

- p. community relations which include public or community relations activities directed toward the community or public at large or any segment of the public to encourage understanding, accessibility and use of community-based facilities, programs or services,
- q. emergency shelter beds and shelter host homes which include emergency shelter care for juveniles referred to the program needing shelter care within the State of Oklahoma,
- r. transitional living programs which include a structured program to help older homeless youth achieve self-sufficiency and avoid long-term dependence on social services,
- s. community-at-risk services (C.A.R.S.) which include a program provided to juveniles in custody or under the supervision of the Office of Juvenile Affairs or a juvenile bureau to prevent out-of-home placement and to reintegrate juveniles returning from placements. The program shall include, but not be limited to, treatment plan development, counseling, diagnostic and evaluation services, mentoring, tutoring, and supervision of youth in independent living,
- t. first offender programs which include alternative diversion programs for first-time offenders, as defined by Section 7303-4.6 of this title,
- ~~u. teen court programs which include teen court programs subject to the requirements and procedures provided in Section 7303-4.6 of this title,~~
- ~~v. teen substance abuse schools which include teen substance abuse schools that shall include any program approved by the court that provides educational, motivational and behavior modification instruction for juveniles who have chemical dependency problems, and~~
- w. u. other community-based facilities, programs or services designated by the Board as core community-based facilities, programs or services;

<p>STRICKEN (Teen court deleted from 7303-4.6.)</p>

~~10.~~ 11. "Day treatment" means a program which provides intensive services to juveniles 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;

~~11.~~ 12. "Delinquent child or juvenile" means a juvenile who:

- a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, the Oklahoma Vessel and Motor Regulation Act or the Oklahoma Boating Safety Regulation Act, or has violated any

lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or

- b. has habitually violated traffic laws, traffic ordinances or boating safety laws or rules;

~~12.~~ **13.** "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

~~13.~~ **14.** "Executive Director" means the Executive Director of the Office of Juvenile Affairs;

~~14.~~ **15.** "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. A facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

~~15.~~ **16.** "Graduated sanctions" means a calibrated system of sanctions designed to ensure that juvenile offenders face uniform, immediate, and consistent consequences that correspond to the seriousness of each offender's current offense, prior delinquent history, and compliance with prior interventions;

~~16.~~ **17.** "Group home" means a residential facility 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. A group home shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

~~17.~~ **18.** "Independent living program" means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

~~18.~~ **19.** "Institution" means a residential facility offering care and treatment for more than twenty residents. An institution shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes. 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;

~~19.~~ 20. "Juvenile detention facility" means a secure facility which meets the certification standards of the **Department Office** and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. A juvenile detention facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

~~20.~~ 21. "**Mental Behavioral** health facility" means a mental health **or substance abuse** facility as **defined provided for** by the Inpatient Mental Health **and Substance Abuse** Treatment of **Children Minors** Act;

~~21.~~ 22. "Municipal juvenile facility" means a facility other than a community intervention center that accepts a child under eighteen (18) years of age charged with violating a municipal ordinance and meets the requirements of **Section 7303-1.2** of this title;

~~22.~~ 23. "Office" means the Office of Juvenile Affairs;

~~23.~~ 24. "Peer Review" means an initial or annual review and report to the Office of Juvenile Affairs of the organization, programs, records and financial condition of a Youth Services Agency by the Oklahoma Association of Youth Services, or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members. An annual review may consist of a review of one or more major areas of the operation of the Youth Services Agency being reviewed;

~~24.~~ 25. "Person responsible for a juvenile's health or welfare" includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile'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 or facility, or an owner, operator, or employee of a child care facility as defined by **Section 402** of this title;

~~25.~~ 26. "Preliminary inquiry" or " intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Oklahoma Juvenile Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

~~26.~~ 27. "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside **an Department of Juvenile Justice Office of Juvenile Affairs** facility directly or by contract under prescribed conditions and under supervision by the **Department Office**, subject to return to the court for violation of any of the conditions prescribed;

~~27.~~ 28. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

CHANGES by DMHSAS.

29. "Responsible adult" means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in another person's absence who is eighteen (18) years of age or older.

28. 30. "Secure detention" means the temporary care of juveniles who require secure custody in physically restricting facilities:

- a. while under the continuing jurisdiction of the court pending court disposition, or
- b. pending placement by the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs** after adjudication;

29. 31. "Training school" or "secure facility" means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which relies on locked rooms and buildings, and fences for physical restraint in order to control behavior of its residents. A training school or secure facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

30. 32. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

31. 33. "Youth Services Agency" means a nonprofit corporation with a local board of directors, officers and staff that has been designated by the Board as a Youth Services Agency, that is peer reviewed annually, and that provides community-based facilities, programs or services to juveniles and their families in the youth services service area in which it is located.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

**ARTICLE H. 7 -- JUVENILE JUSTICE
PART 1. BOARD OF JUVENILE AFFAIRS**

§ 7-101

§ ~~7302-1.1~~. Board of Juvenile Affairs--Members--Duties and responsibilities

A. There is hereby created, effective February 1, 1995, the Board of Juvenile Affairs which shall consist of seven (7) members who shall be appointed by the Governor with the advice and consent of the Senate.

B. One member shall be appointed from each congressional district and any remaining members shall be appointed from the state at large. However, when congressional districts are redrawn each member appointed prior to July 1 of the year in which such modification becomes effective shall complete the current term of office and appointments made after July 1 of the year in which such modification becomes effective shall be based on the redrawn districts. Appointments made after July 1 of the year in which such modification becomes effective shall be from any redrawn districts which are not represented by a board member until such time as each of the modified congressional districts are represented by a board member. No appointments may be made after July 1 of the year in which such modification becomes effective if such appointment would result in more than two members serving from the same modified district. The terms of office of the members serving on the Board on the effective date of this act shall expire at the end of the current term of the member.

C. 1. All appointments made by the Governor pursuant to this act shall be as follows:

- a. one member appointed by the Governor shall be a resident of the First Congressional District,
- b. one member appointed by the Governor shall be a resident of the Second Congressional District,
- c. one member appointed by the Governor shall be a resident of the Third Congressional District,
- d. one member appointed by the Governor shall be a resident of the Fourth Congressional District,
- e. one member appointed by the Governor shall be a resident of the Fifth Congressional District,
- f. one member appointed by the Governor shall be appointed at large, and
- g. one member appointed by the Governor shall be appointed at large.

All members shall be appointed for terms of four (4) years. All terms shall expire on the first day of July of the year in which the terms of each member expire.

2. Thereafter an appointment shall be made by the Governor within ninety (90) days after a vacancy has occurred due to resignation, death, or any cause resulting in an unexpired term. In the event of a vacancy on the Board due to resignation, death, or for any cause resulting in an unexpired term, if not filled within ninety (90) days following such vacancy, the Board may appoint a provisional member to serve in the interim until the Governor makes an appointment.

3. A member may be reappointed to succeed himself or herself for one additional term.

D. To be eligible for appointment to the Board a person shall:

1. Be a citizen of the United States;

2. Be a resident of this state;

3. Be a qualified elector of this state; and

4. Not have been convicted of a felony pursuant to the laws of this state, the laws of any other state, or the laws of the United States.

E. Members appointed pursuant to this paragraph shall include persons having experience in social work, juvenile justice, criminal justice, community-based youth services, criminal-justice-related behavioral sciences, indigent defense, and education. In making the appointments, the Governor shall also give consideration to urban, rural, gender, and minority representation.

F. Any member of the Board may be removed from office in the manner provided by law for the removal of officers not subject to impeachment.

G. 1. The Board shall hold meetings as necessary at a place and time to be fixed by the Board. The Board shall elect, at its first meeting, one of its members to serve as chair and another of its members to serve as vice-chair. At the first meeting in each calendar year thereafter, the chair and vice-chair for the ensuing year shall be elected. Special meetings may be called by the chair or by five members of the Board by delivery of written notice to each member of the Board. A majority of members serving on the Board shall constitute a quorum of the Board.

2. Members of the Board shall receive necessary travel expenses according to the provisions of the State Travel Reimbursement Act, but shall receive no other compensation. Travel expenses shall be paid from funds available to the Office of Juvenile Affairs.

H. The Board shall:

1. Adopt and promulgate rules for its government and may adopt an official seal for the Office of Juvenile Affairs;
2. Appoint and fix the compensation of the Executive Director of the Office of Juvenile Affairs;
3. Be the rulemaking body for the Office of Juvenile Affairs;
4. Review and approve the budget request of the Office of Juvenile Affairs to the Governor;
5. Assist the Office of Juvenile Affairs in conducting periodic reviews and planning activities related to the goals, objectives, priorities, and policies of the Office;
6. Provide a public forum for receiving comments and disseminating information to the public and the regulated community regarding goals, objectives, priorities, and policies of the Office of Juvenile Affairs at least quarterly. The Board shall have the authority to adopt nonbinding resolutions requesting action by the Office of Juvenile Affairs in response to comments received or upon the Board's own initiative; and
7. Establish contracting procedures for the Office of Juvenile Affairs and guidelines for rates of payment for services provided by contract.

I. 1. As the rulemaking body of the Office of Juvenile Affairs, the Board is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Office pursuant to the Oklahoma Juvenile Code.

2. Effective July 1, 1995, any administrative policies adopted by the Commission for Human Services related to personnel and other administrative issues and any rules promulgated relating to the custody, care and supervision of children adjudicated to be delinquent or in need of supervision shall be and remain in effect until amended or new rules are promulgated by the Board of Juvenile Affairs.

3. Any rules adopted by the Commission for Human Services related to personnel and other administrative issues and the custody, care and supervision of children adjudicated to be delinquent or in need of supervision and subject to review by the Legislature during the 1st Session of the 45th Oklahoma Legislature may be finally adopted and promulgated by the Board of Juvenile Affairs pursuant to the Administrative Procedures Act.

4. Starting April 1, 1995, the Board of Juvenile Affairs shall conduct an internal review of current permanent and emergency rules relating to the custody, care and supervision of children adjudicated to be delinquent or in need of supervision to determine whether such rules need to be amended, or repealed, reinstated, or recodified. By January 1, 1997, the Board shall have adopted permanent rules to implement the programs and functions within its jurisdiction and shall submit such rules for legislative review pursuant to Article I of the Administrative Procedures Act.

5. The Board of Juvenile Affairs shall develop performance standards for programs implemented, either directly or pursuant to contract, by the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 2. OFFICE OF JUVENILE AFFAIRS

§ 7-201

~~§ 7302-2.1~~ Executive Director--Qualifications--Powers and duties

A. The Board of Juvenile Affairs shall appoint the Executive Director of the Office of Juvenile Affairs. The Executive Director shall serve at the pleasure of the Board.

B. The Executive Director of the Office of Juvenile Affairs shall be qualified for such position by character, ability, education, training, and successful administrative experience in the corrections or juvenile justice field; shall have earned a master's degree or other advanced degree from an accredited college or university with a major field of study in at least one of the following: Corrections, juvenile justice, juvenile delinquency, criminal justice, law, police science, criminology, psychology, sociology, administration, education, or a related social science, and three (3) years' work experience in corrections or juvenile justice, or a bachelor's degree in the degree areas specified in this subsection and four (4) years' progressively responsible work experience in corrections or juvenile justice.

C. The Executive Director shall provide for the administration of the Office of Juvenile Affairs and shall:

1. Be the executive officer and supervise the activities of the Office of Juvenile Affairs;
2. Pursuant to legislative authorization employ, discharge, appoint or contract with, and fix the duties and compensation of such assistants, attorneys, law enforcement officers, probation officers, psychologists, social workers, medical professionals, administrative, clerical and technical, investigators, aides and such other personnel, either on a full-time, part-time, fee or contractual basis, as in the judgment and discretion of the Executive Director shall be deemed necessary in the performance or carrying out of any of the purposes, objectives, responsibilities, or statutory provisions relating to the Office of Juvenile Affairs, or to assist the Executive Director of the Office of Juvenile Affairs in the performance of official duties and functions;
3. Establish internal policies and procedures for the proper and efficient administration of the Office of Juvenile Affairs; and
4. Exercise all incidental powers which are necessary and proper to implement the purposes of the Office of Juvenile Affairs pursuant to the Oklahoma Juvenile Code.

D. The Executive Director shall employ an attorney to be designated the "General Counsel" who shall be the legal advisor for the Office of Juvenile Affairs. Except as provided in this subsection, the General Counsel is authorized to appear for and represent the Board and Office in any litigation that may arise in the discharge of the duties of the Board and Office.

It shall continue to be the duty of the Attorney General to give an official opinion to the Executive Director of the Office of Juvenile Affairs and the Office of Juvenile Affairs and to prosecute and defend actions therefor, if requested to do so. The Attorney General may levy and collect costs, expenses of litigation and a reasonable attorney fee for such legal services from the Office. The Office shall not contract for representation by private legal counsel unless approved by the Attorney General. Such contract for private legal counsel shall be in the best interests of the state. The Attorney General shall be notified by the Office of Juvenile Affairs or its counsel of all lawsuits against the Office of Juvenile Affairs or officers or employees thereof, that seek injunctive relief which would impose obligations requiring the expenditure of funds in excess of unencumbered monies in the agency's appropriations or beyond the current fiscal year. The Attorney General shall review any such cases and may represent the interests of the state, if the Attorney General considers it to be in the best interest of the state to do so, in which case the Attorney General shall be paid as provided in this subsection. Representation of multiple defendants in such actions may, at the discretion of the Attorney General, be divided with counsel for the Office as necessary to avoid conflicts of interest.

**S.B. 502
amendments,
effective
11-1-08.**

E. The Executive Director of the Office of Juvenile Affairs shall have the authority to commission certified employees within the Office of Juvenile Affairs as peace officers. The authority of employees so commissioned shall only include the authority to investigate crimes committed against the Office or crimes committed in the course of any program administered by the Office. Employees so commissioned shall also have the authority to serve and execute process, bench warrants, and other court orders in any judicial or administrative proceeding in which the agency is a party or participant. Use and possession of firearms for this purpose only shall be permitted. To become qualified as peace officers for the commission, employees shall first obtain a certificate as provided for in Section 3311 of Title 70 of the Oklahoma Statutes.

~~E.~~ **E.** In the event of the Executive Director's temporary absence, the Executive Director may delegate the exercise of such powers and duties to a designee during the Executive Director's absence. In the event of a vacancy in the position of Executive Director, the Board of Juvenile Affairs shall appoint a new Executive Director. The Board may designate an interim or acting Executive Director who is authorized to exercise such powers and duties until a permanent Executive Director is employed.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 2. OFFICE OF JUVENILE AFFAIRS

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7302-2.2, as amended by Section 4, Chapter 320, O.S.L. 2006 (10 O.S. Supp. 2006, Section 7302-2.2), is amended to read as follows:

7-202

Section 7302-2.2. A. There is hereby created the Office of Juvenile Affairs which shall be responsible for programs and services for juveniles alleged or adjudicated to be delinquent or in need of supervision. Within the Office of Juvenile Affairs there is hereby created:

1. The Division of Institutional Services which shall be responsible for the institutions operated by or contracted for by the Office of Juvenile Affairs;
2. The Division of Community-based Youth Services which shall be responsible for contracting with, monitoring, evaluation and support of community-based Youth Services Agencies;
3. The Division of Juvenile and Treatment Services which shall be responsible for intake, probation and parole services, supervision and placement of juveniles and the contracting for, monitoring and evaluation of residential and treatment programs other than institutions and community-based Youth Services Agencies; and
4. Such other divisions specifically established by the Executive Director of the Office of Juvenile Affairs, with the approval of the Board.

The Executive Director of the Office of Juvenile Affairs, with the approval of the Board, shall appoint a Director of the Division of Institutional Services, a Director of the Division of Community-based Youth Services, and a Director of the Division of Juvenile and Treatment Services to serve as the administrative head of each division, respectively. The Division Directors shall have at least six (6) years of experience in the same or similar programs or facilities as they are to supervise and a baccalaureate degree or higher level of education.

B. Suitable office space shall be provided by the Department of Central Services to the Office of Juvenile Affairs, to the extent necessary for the Office to implement its jurisdictional duties provided by the Oklahoma Juvenile Code, and the Office may incur necessary expenses for office rent.

C. Effective July 1, 1995, the Office of Juvenile Affairs shall be a Merit System agency and all employees of the Office of Juvenile Affairs shall be classified employees who are subject to the Oklahoma Personnel Act and the Merit System of Personnel Administration, except as otherwise provided by law.

D. Effective July 1, 1995, within its jurisdictional areas of responsibility, the Office of Juvenile Affairs, acting through the Executive Director, or persons authorized by law, rule or designated by the Executive Director to perform such acts, shall have the power and duty to:

1. Advise, consult, cooperate and enter into agreements with agencies of the state, municipalities and counties, other states and the federal government, and other persons;
2. Enter into agreements for, accept, administer and use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and carry on in this state any program within its jurisdictional area of responsibility;
3. Require the establishment and maintenance of records and reports;
4. Establish a system of training for personnel in order to assure uniform statewide application of law and rules;
5. Enforce the provisions of the Oklahoma Juvenile Code and rules promulgated thereunder and orders issued pursuant thereto;
6. Charge and receive fees pursuant to fee schedules promulgated by the Board of Juvenile Affairs;
7. Conduct studies, research and planning of programs and functions, pursuant to the authority granted by the Oklahoma Juvenile Code;
8. Enter into interagency agreements;
9. Provide administrative and support services to the Board of Juvenile Affairs as necessary to assist the Board in the performance of their duties;
10. Establish and maintain such facilities and institutions as are necessary or convenient for the operation of programs for children under the jurisdiction of the Office of Juvenile Affairs;
11. Lease, from time to time, any real property which the Board of Juvenile Affairs shall determine advisable to more fully carry into effect the operation of the Office of Juvenile Affairs in accordance with applicable state statutes. All such leases for real property shall be subject to the provisions of Section 63 of Title 74 of the Oklahoma Statutes;
12. Purchase or lease any equipment, supplies or materials pursuant to The Oklahoma Central Purchasing Act;
13. Contract for professional services;

14. Acquire, construct, extend, and operate any and all facilities of all kinds which in the judgment of the Executive Director and the approval of the Legislature shall be necessary or convenient to carry out the duties of the Office of Juvenile Affairs, as authorized by law; and

15. Exercise all incidental powers which are necessary and proper to implement and administer the purposes of the Oklahoma Juvenile Code.

E. The Office of Juvenile Affairs shall maintain a fair, simple and expeditious system for resolution of grievances of all persons committed to the Office of Juvenile Affairs regarding the substance or application of any written or unwritten policy, rule of the Board of Juvenile Affairs or of an agent or contractor of the Office of Juvenile Affairs or any decision, behavior or action by an employee, agent or contractor or by any other person committed to the Office of Juvenile Affairs.

SECTION 2. This act shall become effective November 1, 2007.

Approved April 30, 2007.

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END OF DOCUMENT

§ 7-203

~~§ 7302-2.3.~~ Agreement with Supreme Court

The Office of Juvenile Affairs and the Department of Human Services shall enter into an agreement with the State Supreme Court acceptable to that Court in its capacity as the constitutional manager of the State Court System:

1. To develop and recommend educational programs for judges whose docket responsibilities include cases involving the care, custody, guardianship, or support of children, for persons who provide services to children within the jurisdiction of the courts, and for attorneys who practice before courts with such jurisdiction;
2. To identify areas in which improvements may be made in the administration and procedures of the courts and to make appropriate recommendations; and
3. To identify areas in which improvements may be made in the services subject to oversight by the courts and to make appropriate recommendations.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-204

~~§ 7302-2.4.~~ Employee's personal property damaged or destroyed by juvenile in custody-- Repair or replacement

The Office of Juvenile Affairs is authorized to repair or replace the personal property of an employee if the personal property is damaged or destroyed by a juvenile who is in the custody of the Office of Juvenile Affairs while the employee is engaged in the performance of official duties for the Office of Juvenile Affairs. Any personal property repaired or replaced shall be comparable in kind, quality and cost to the original property. Reimbursement shall not duplicate insurance coverage carried by the employee.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-205 REPEAL

~~§ 7302-2.5. Report to Department of Education~~

~~On or before June 1st of each year the Office of Juvenile Affairs shall annually report to the State Department of Education the number of individual students who have been referred to a county juvenile service unit, a county juvenile bureau or who have been committed to the custody of the Office of Juvenile Affairs. The number of students shall be reported by school district.~~

STRICKEN – approved by DEPT. OF EDUCATION

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 3. ~~DEPARTMENT OF JUVENILE JUSTICE~~ OFFICE OF JUVENILE AFFAIRS

§ 7-301

§ ~~7302-3.1~~. Office of Juvenile Affairs--Responsibilities, offices, programs--Transfer of employees, powers, duties etc.

A. Effective July 1, 2006, in addition to other responsibilities specified by law, the Office of Juvenile Affairs shall:

1. Be the state planning and coordinating agency for statewide juvenile justice and delinquency prevention services; provided, it shall give full consideration to any recommendations of the Oklahoma Association of Youth Services regarding community-based facilities, programs or services;
2. Provide court intake, probation and parole for delinquent children; and
3. Collect and disseminate information and engage in juvenile justice or delinquency prevention activities relating to the provisions of the Oklahoma Juvenile Code.

B. The Office of Juvenile Affairs shall include the following:

1. The Office of Advocate Defender;
2. The Office of the Parole Board which shall consist of the Parole Review and Hearing Board; and
3. Such other offices prescribed by the Executive Director of the Office of Juvenile Affairs or by law.

C. 1. Effective July 1, 2006, the following programs are established within the Office of Juvenile Affairs:

- a. programs for community intervention and diversion projects to prevent juvenile delinquency,
- b. state programs for children who are potentially delinquent and/or who are adjudicated delinquent,
- c. programs for community disciplinary projects,
- d. programs of juvenile crime restitution,
- e. the ~~Serious and Habitual~~ Juvenile Offender Tracking Program,
- f. regimented juvenile training programs,

NEW CHANGE

g. the Delinquency and Youth Gang Intervention and Deterrence Act, and

h. such other programs prescribed by the Executive Director of the Office of Juvenile Affairs or by law.

2. Beginning July 1, 1995, the Office of Juvenile Affairs, in cooperation with the courts, shall develop programs which can be used directly by the Office of Juvenile Affairs or can be used in communities with the assistance of the Office of Juvenile Affairs to divert juveniles at risk of becoming delinquent from the formal court process. ~~Such programs shall include, but not be limited to:~~ Any such programs shall meet the requirements of § 7303-4.6.

~~a. alternative diversion programs for first-time offenders as defined by Section 7303-4.6 of this title,~~

~~b. teen court programs, subject to the requirements and procedures provided in Section 7303-4.6 of this title, and~~

~~c. teen substance abuse schools. A teen substance abuse school shall include any program approved by the court that provides educational, motivational and behavior modification instruction for juveniles who have chemical dependency problems.~~

D. Beginning July 1, 1995, the Office of Juvenile Affairs, in its role as coordinator for delinquency prevention services, shall, after full consideration of any recommendation of the Oklahoma Association of Youth Services:

1. Establish guidelines for juvenile delinquency prevention and diversion programs for use in community-based programs, including but not limited to:

a. counseling programs,

b. recreational programs,

c. job skills workshops,

d. community public improvement projects,

e. mediation programs,

f. programs to improve relationships between juveniles and law enforcement personnel,

g. diagnostic evaluation services,

h. substance abuse prevention programs,

- i. independent living skills and self-sufficiency planning programs, and
- j. case management services; and

2. Provide that personnel shall be available in each county of the state to assist local communities in developing and implementing community programs to prevent delinquency and to divert juveniles who have committed delinquent acts from committing further delinquent or criminal acts. The Office of Juvenile Affairs shall provide this service in each county either directly or by contract.

E. 1. On July 1, 2006, the following programs or divisions, which were transferred from the Department of Human Services to the Department of Juvenile Justice on July 1, 1995, shall be transferred, along with funding allocations, ~~from the Department of Juvenile Justice~~ to the Office of Juvenile Affairs:

- a. the Residential Services Unit of the Office of Juvenile Justice and all staff for the Unit,
- b. the Quality Assurance Monitoring Unit of the Office of Juvenile Justice and all staff for the Unit,
- c. the Contract Management/Youth Services Unit of the Office of Juvenile Justice and all staff for the Unit,
- d. the Psychological Unit of the Office of Juvenile Justice and all staff for the Unit,
- e. the Juvenile Services Unit and all field and supervisory staff for the Unit,
- f. all institutional staff for institutions transferred from the Department of Human Services to the Office of Juvenile Affairs,
- g. all staff assigned to the community residential programs of the Office of Juvenile Justice,
- h. the Management Services Unit of the Office of Juvenile Justice,
- i. the Programs Unit of the Office of Juvenile Justice,
- j. all staff of the business office of the Office of Juvenile Justice,
- k. the Planning and Information Unit of the Office of Juvenile Justice,
- l. all staff of the Office of Juvenile Justice assigned to serve as the liaison to the Federal Court Monitor of the Office of Justice,
- m. the Parole Review and Hearing Board within the Office of the General Counsel of the Department of Human Services and all members of the Board and support staff for the Board, and

n. the Division Administrator for the Office of Juvenile Justice and administrative staff for the Division Administrator.

2. The Office of Juvenile Affairs and the Department of Human Services may enter into an agreement for the transfer of personnel on July 1, 1995, from the Department of Human Services to the Office of Juvenile Affairs. No selected employee shall be transferred to the Office of Juvenile Affairs, except on the freely given written consent of the employee.

3. The classified and unclassified employees who are transferred pursuant to paragraph 1 or 2 of this subsection from the Department of Human Services to the Office of Juvenile Affairs on July 1, 1995, shall be subject to the following provisions:

- a. classified employees shall remain subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act except that such employees shall be exempt from the provisions of the Merit System pertaining to classification until October 1, 1995. Effective October 1, 1995, such employees shall be given status in the class to which the position occupied by the employee on October 1, 1995, is allocated by the Office of Personnel Management. The salary of such an employee shall not be reduced as a result of such position allocation, and if the employee's salary is below the minimum rate of pay for the class to which the position occupied by the employee on October 1, 1995, is allocated, the employee's salary shall be adjusted up to the minimum rate of pay; provided, if such allocation is a promotion, the minimum rate shall be determined as provided in 530:10-7-14 of the Oklahoma Administrative Code,
- b. unclassified employees shall remain in the unclassified service and shall serve at the pleasure of the Executive Director. Effective October 1, 1995, such employees who occupy positions that are subject to the Merit System of Personnel Administration shall become classified and subject to the provisions of the Merit System of Personnel Administration pursuant to Section 840-4.1 of Title 74 of the Oklahoma Statutes. Unclassified employees who, on October 1, 1995, occupy positions that remain in the unclassified service pursuant to law, shall remain in the unclassified service and shall continue to serve at the pleasure of the Executive Director,
- c. all employees who are transferred to the Office of Juvenile Affairs shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their tenure with the agency from which transferred. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. The transfer of personnel among the state agencies shall be coordinated with the Office of Personnel Management, and
- d. if the Office of Juvenile Affairs should implement a reduction in force, all employees transferred from the Department of Human Services to the Office of Juvenile Affairs on July 1, 1995, shall be credited for the time they were employed by the Department of Human Services. The Office of Juvenile Affairs may enter into a contract for

professional services for any contract that was in effect at the time of the posting of the reduction in force with a person who has been separated from service with the Office of Juvenile Affairs as a result of the reduction in force.

F. Effective July 1, 1995, custody, care and supervision of juveniles adjudicated to be delinquent or in need of supervision and any monies and funds received on behalf of such juveniles are hereby transferred from the Department of Human Services to the Office of Juvenile Affairs. Records in the custody of the Department of Human Services on the transfer date relating to delinquent juveniles and juveniles in need of supervision shall be transferred to the Department of Juvenile Justice. Effective July 1, 2006, records in the custody of the Department of Juvenile Justice relating to delinquent juveniles and juveniles in need of supervision shall be transferred to the Office of Juvenile Affairs.

G. Effective July 1, 1995, all powers, duties, records, property, assets, monies and funds of the Office of Juvenile Justice shall be transferred to the Office of Juvenile Affairs. Effective July 1, 1995, liabilities of the Office of Juvenile Justice shall be transferred to the Office of Juvenile Affairs as provided for in the appropriation process of the Legislature. Any additional administrative support or costs incurred by the Office of Juvenile Affairs as a result of the transfer required by this section shall be borne by the Office of Juvenile Affairs.

H. The Office of Juvenile Justice shall be abolished by the Commission for Human Services after such transfer has been completed.

I. The Director of State Finance is hereby directed to coordinate the transfer of assets, funds, allotments, purchase orders, liabilities, outstanding financial obligations or encumbrances provided for in this section. The Department of Central Services is hereby directed to coordinate the transfer of property and records provided for in this section.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-302

~~§ 7302-3.2.~~ Division of Advocate Defender--Advocate General--Duties and responsibilities

A. ~~Effective July 1, 1995,~~ ~~†~~There is hereby established within the ~~Department of Juvenile Justice Office of Juvenile Affairs~~ the Division of Advocate Defender which will be separate and apart from the Office of General Counsel. The administrative officer of the Division of Advocate Defender shall be the Advocate General, who shall be an attorney with a minimum of three (3) years' experience as an attorney. The Executive Director of the Office of Juvenile Affairs shall employ such other personnel as may be necessary to carry out the purposes of this section. Such personnel may be dismissed only for cause.

B. ~~Effective July 1, 1995,~~ ~~†~~The duties and responsibilities of the Advocate General are as follows:

1. Supervise personnel assigned to children's institutions and facilities as student defender/representatives;
2. Monitor and review grievance procedures and hearings;
3. Investigate grievances of juveniles and staff grievances related to juveniles which are not resolved at the facility level;
4. Report to the Department of Human Services allegations of abuse or neglect of juveniles who are in the custody of the Office of Juvenile Affairs and placed in private facilities or facilities operated by the Office of Juvenile Affairs; or
5. Coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations;
6. Make recommendations to the ~~Deputy Executive~~ Director of the ~~Department of Juvenile Justice Office of Juvenile Affairs~~, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Executive Director of the Office of Juvenile Affairs, the Office of Juvenile System Oversight and other appropriate persons as necessary;
7. Forward to the Office of Juvenile Systems Oversight, for the information of the Executive Director of the Office of Juvenile Systems Oversight, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances established by the Office of Juvenile Affairs, in the favor of the complainant; and
8. Perform such other duties as required by the Executive Director of the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

§ 7-303

§ ~~7302-3.3~~. Community-based programs

The Office of Juvenile Affairs, in its role as planner and coordinator for juvenile justice and delinquency prevention services, is hereby authorized to and shall enter into contracts for the establishment and, maintenance of community-based facilities, services and programs which may include, but are not limited to: Emergency shelter, diagnosis, crisis intervention, counseling, group work, case supervision, job placement, alternative diversion programs for first-time offenders and for youth alleged or adjudicated to be in need of supervision, recruitment and training of volunteers, consultation, case management services, and agency coordination with emphasis on keeping youth with a high potential for delinquency out of the traditional juvenile justice process and community intervention centers. The Office of Juvenile Affairs shall enter into contracts with Youth Services Agencies for core community-based facilities, programs and services based on need as indicated in its State Plan for Youth Services Agencies.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 3. ~~DEPARTMENT OF JUVENILE JUSTICE~~ OFFICE OF JUVENILE AFFAIRS

§ 7-304

~~§ 7302-3.4.~~ Financial agreements

The Office of Juvenile Affairs, in its role as planner and coordinator for juvenile justice and delinquency prevention services, is hereby authorized to enter into financial agreements with federal, state and local agencies or entities of government, or with any private agency, for juvenile delinquency prevention programs and juvenile treatment programs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-305

§ ~~7302-3.5~~. Agreements to establish or maintain community-based youth service programs, shelters and community intervention centers

A. The Office of Juvenile Affairs is authorized to enter into contracts to establish or maintain community-based youth service programs, shelters and community intervention centers out of local, state and federal monies.

B. The Office of Juvenile Affairs shall take all necessary steps to develop and implement a diversity of community services and community-based residential care as needed to provide for adequate and appropriate community-based care, treatment and rehabilitation of children in the care, custody, and supervision of the Office of Juvenile Affairs. Such community services and residential care shall be consistent with the treatment needs of the child and the protection of the public.

1. The Office of Juvenile Affairs shall, to the extent reasonable and practicable, provide community-based services, community residential care and community intervention centers to children in the custody of the Office of Juvenile Affairs through financial agreements, as authorized in Sections 7302-3.3 and 7302-3.4 of this title.

2. The Office of Juvenile Affairs shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services, community residential care and community intervention centers. A copy of such procedures shall be made available to any member of the general public upon request.

C. Any state agency letting grants or contracts for the establishment of community residential care or treatment facilities for children shall require, as a condition for receipt of such grants or contracts, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been made for providing the educational services to which residents of the facility are entitled pursuant to state and federal law.

D. 1. The Office of Juvenile Affairs shall implement programs for establishment and continued operation of community intervention centers. The centers shall be established pursuant to interlocal agreements between one or more municipalities and the Office of Juvenile Affairs pursuant to rules promulgated by the Office. The municipality may enter into subcontracts with one or more service providers, subject to the approval by the Office of Juvenile Affairs. The service provider, whether a municipality or other entity, must have access to the management information system provided for in Section 7302-3.8 of this title and must employ qualified staff, as determined by the Office of Juvenile Affairs.

2. The community intervention center shall serve as a short-term reception facility to receive and hold juveniles who have been taken into custody by law enforcement agencies for the alleged violation of a municipal ordinance or state law and for whom detention is inappropriate or unavailable. The community intervention center may be a secure facility. Juveniles held in the community intervention facility shall not be isolated from common areas other than for short-term protective holding for combative or self-destructive behavior, as defined by the Office of Juvenile Affairs.

3. Juveniles shall not be held in a community intervention center for more than twenty-four (24) hours.

4. The community intervention center shall perform the following functions:

- a. enter demographic information into the management information system provided for in Section 7302-3.8 of this title,
- b. immediately notify the parents or parent, guardian, or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable the adult with whom the juvenile resides, that the juvenile has been taken into custody and to pick up the juvenile, and
- c. hold juveniles until they can be released to a parent, guardian, or other responsible adult or until a temporary placement can be secured, but in no event for longer than twenty-four (24) hours.

5. The community intervention center may perform the following functions:

- a. gather information to determine if the juvenile is in need of immediate medical attention,
- b. conduct an initial assessment pursuant to rules promulgated by the Office of Juvenile Affairs. Such initial assessment may be given without parental consent if the juvenile agrees to participate in the assessment, and
- c. conduct an assessment pursuant to a Problem Behavior Inventory or a Mental Status Checklist or an equivalent assessment instrument authorized by rules promulgated by the Office of Juvenile Affairs, if written permission to do so is obtained from the parent, guardian or other person legally responsible for the juvenile's care. Such person and the juvenile may review the assessment instrument prior to the assessment process, must be informed that participation in the assessment is voluntary and that refusal to participate shall not result in any penalty, and must sign a written acknowledgment that they were given an opportunity to review the assessment instrument. The assessment shall be used to develop recommendations to correct the behavior of the juvenile, to divert the progression of the juvenile into the juvenile justice system, to determine if the juvenile is in need of nonemergency medical treatment, and to determine if the juvenile is the victim of violence. Information derived from the assessment shall not be used in any phase of

prosecution but may be used by the court following adjudication for the dispositional order and may be used for referrals to social services.

6. A juvenile alleged to have committed an offense which would be a felony if committed by an adult may be fingerprinted at a community intervention center. No other juveniles shall be fingerprinted at community intervention centers.

7. Community intervention centers shall be certified pursuant to standards established and rules promulgated by the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-306

~~§ 7302-3.6a.~~ Designation of organizations as Youth Services Agencies-- Termination of designation--Contract administration

A. Funds specifically appropriated to the Office of Juvenile Affairs for designated Youth Services Agency programs for both the Office of Juvenile Affairs and the Department of Human Services shall be made available through contracts negotiated by the Office of Juvenile Affairs, to organizations designated by the Board of Juvenile Affairs as "Youth Services Agencies". All core community-based programs and services to be performed by a Youth Services Agency during a contract period shall be included in one contract or contract extension for that period. Designations of Youth Services Agencies by the Board shall be granted based on community needs, as indicated in the State Plan for Youth Services Agencies which shall be adopted by rule by the Board. The State Plan for Youth Services Agencies shall be adopted in accordance with criteria approved by the Board of Juvenile Affairs after full consideration of any recommendations of the Department of Human Services and the Oklahoma Association of Youth Services. The criteria and plan adopted by the Board shall designate community-based Youth Services Agency Service Areas that will serve as the primary catchment area for each Youth Services Agency. Until the criteria is established by the Board, the criteria established by the Commission for Human Services shall remain in effect. The criteria for designation of Youth Services Agencies shall include but shall not be limited to:

1. Capability to deliver all or part of the compensable services enumerated in Section 7302-3.3 of Title 10 of the Oklahoma Statutes, if the Youth Services Agency is to provide such services;
2. Capability to deliver all or part of the compensable children's services that the Department of Human Services is authorized to provide for by contract with a private agency, if the Youth Services Agency is to provide such services;
3. Adequate and qualified staff who are available as needed, within a reasonable time after being contacted for services in each county served by the agency;
4. Adequate services in the Youth Services Agency Area served by the agency;
5. Financial viability;
6. A documented need for the local services to be offered as determined by a local needs assessment for the Youth Services Agency Service Area that shall be reviewed and approved or modified by the Board and included in the State Plan for Youth Services Agencies; and
7. Any negative impact on the ability to provide services or the financial viability of an existing Youth Services Agency.

As used in this section, "financial viability" means the ability of a Youth Services Agency to continue to achieve its operating objectives and fulfill its mission over the long term. When determining the financial viability of a Youth Services Agency, the Office of Juvenile Affairs shall develop an analysis that takes into consideration the three (3) previous fiscal years' financial audits, if available; the previous fiscal year program audits, if available; the current fiscal year financial position; and one-year future revenue and expenditure projection.

B. The criteria for designation of Youth Services Agencies also may include:

1. Successful completion of an initial peer review by the Oklahoma Association of Youth Services or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members; and
2. Such other criteria as the Board of Juvenile Affairs determines appropriate.

C. Each Youth Services Agency receiving, by grant or contract from the Department of Human Services on June 30, 1995, state funds specifically appropriated for community-based youth services programs, is hereby automatically designated a "Youth Services Agency".

D. The Board of Juvenile Affairs, on recommendation of the Office of Juvenile Affairs, may terminate the designation of a Youth Services Agency that:

1. Is seriously deficient in the administration of its program;
2. Loses financial viability; or
3. Fails to successfully complete the annual peer review process by the Oklahoma Association of Youth Services or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members.

Before the Board of Juvenile Affairs terminates the designation of a Youth Services Agency, the Office of Juvenile Affairs shall complete a report documenting its reasons for the termination. The report shall be submitted to the Board for review. The report shall contain an analysis of the program administration, financial viability and most recent peer review report of the Youth Services Agency. The Office of Juvenile Affairs shall also develop a plan to ensure that services provided by the Youth Services Agency whose designation is being terminated shall continue to be provided by another Youth Services Agency or agencies. In developing the plan, the Office of Juvenile Affairs shall give full consideration to any recommendations of the Oklahoma Association of Youth Services. The plan shall be submitted to the Board as part of the report documenting the reasons for termination of the Youth Services Agency by the Office of Juvenile Affairs.

Any applicant organization denied designation as a Youth Services Agency or any Youth Services Agency whose designation as a Youth Services Agency is being terminated, is entitled to an individual proceeding as provided in Article II of the Administrative Procedures Act.

E. No Youth Services Agency shall be eligible to receive funding until the beginning of the fiscal year after it receives its designation as a Youth Services Agency unless it is replacing a Youth Services Agency whose designation has been terminated. No Youth Services Agency shall receive funding for the first time if such funding will result in lowering the contract amount from the previous fiscal year for any existing Youth Services Agency.

F. The Office of Juvenile Affairs shall be the sole administrator of Youth Services Agency contracts. Any contracting procedure shall include a procedure for converting all contracts to a system of payment which will be structured in a manner that will allow for the receipt of all available federal funds. Provided, the Office of Juvenile Affairs shall make no requirement that would require a juvenile to be inappropriately diagnosed for the purpose of receiving federal reimbursement for services.

G. The Office of Juvenile Affairs and the Department of Human Services shall enter into a cooperative agreement that establishes procedures to ensure the continuation of services provided for in paragraph 2 of subsection A of this section by Youth Services Agencies. The Office of Juvenile Affairs shall consult with the Department of Human Services when assessing the capability of a Youth Services Agency to deliver services pursuant to paragraph 2 of subsection A of this section.

H. Funds for the support of Youth Services Agencies shall be authorized by the Office of Juvenile Affairs only on the basis of cost reimbursement performance contracts or fee-for-service contracts. If a Youth Services Agency provides some services on a fee-for-services basis and some services on a cost reimbursement basis, no cost which has been included as part of the rate for services provided on a fee-for-service basis shall be reimbursable under the cost reimbursement portion of the contract. Fees charged for annual peer reviews shall be reimbursable.

I. The Board may establish a fixed and uniform rate for any community-based prevention service, including services to individuals, groups, and community relations directed toward the larger community, so long as the segment of the larger community or target audience of persons to benefit is identified and the specific prevention activities to be performed are described in the rate.

J. Beginning in fiscal year 2007 and thereafter, contracts for the support of Youth Services Agencies shall be negotiated in the following manner:

1. The local board of the Youth Services Agency, based upon its knowledge and assessment of the needs of the community, shall prepare and present to the Office of Juvenile Affairs a proposal to provide community-based services to juveniles and families in the youth services service area in which it is located. The proposal shall be specific in terms of its program objectives and goals and the services the Youth Services Agency proposes to render;

2. Upon receipt of the proposal of the Youth Services Agency, the Office of Juvenile Affairs shall determine if the proposal meets the criteria adopted by the Board of Juvenile Affairs in the State Plan for Youth Services Agencies and, within the resources available, meets the need for community-based services in the youth services service area. If no State Plan for Youth Services exists, the proposal shall be deemed to meet the need for community-based services in the youth services area;

3. Contracts shall require performance of a specific service or services to be performed. Where the services cannot be broken down into units, specifically measurable and reviewable services shall be stated. Contracts may contain requirements of performance based upon measurable quality outcome indicators. Documentation required for monitoring and evaluation of the contract shall be consistent with the terms of the contract, shall be in accordance with generally accepted governmental accounting practices, and so far as possible, sufficient for the Office of Juvenile Affairs to monitor the performance of the contract without being overly burdensome to the Youth Services Agency. The documentation to be required is the proper subject of negotiation as part of the contracts, and the parties may rely on the Department of Central Services for assistance if they are unable to reach agreement;

4. The Office of Juvenile Affairs and the Youth Services Agency shall negotiate the final terms and enter into the contract. Youth Services Agencies may authorize the Oklahoma Association of Youth Services or another Oklahoma nonprofit corporation, whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members, to negotiate on their behalf; and

5. The Office of Juvenile Affairs and a Youth Services Agency may agree to extend their fiscal year 2006 contracts for a period not to exceed one (1) year in order to implement the provisions of this subsection. The amount of money in the contracts may be amended to reflect any change in the money appropriated for fiscal year 2007 for community-based service agencies.

K. Contracts with Youth Services Agencies for community-based services shall be for a period of twelve (12) months, beginning at the first of each fiscal year, and renewable on an annual basis. Contracts shall be considered during the third and fourth quarter of the fiscal year for contracting the following year. Consideration for renewal shall include a review of the performance of the current contract including the annual peer review. If the Office of Juvenile Affairs determines the contractual relationship shall be renewed, it shall be in a new contract for the upcoming fiscal year and may or may not contain the same terms, conditions, form and format as the previous contract. Any change from the contract of the previous year that is proposed by the Youth Services Agency or the Office of Juvenile Affairs shall be the subject of negotiation at the request of either party.

L. The Oklahoma Association of Youth Services, or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members may provide technical assistance to the Youth Services Agencies in the preparation and presentation of their proposals or negotiations as requested by a Youth Services Agency.

M. The Office of Juvenile Affairs is authorized to contract with the Oklahoma Association of Youth Services or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members for evaluation, training and program materials and for statewide office support, including rental of office space and general technical assistance for Youth Services Agencies with which the Office of Juvenile Affairs has contracts.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-307

~~§ 7302-3.7.~~ Cooperative agreements with Department of Human Services

The Office of Juvenile Affairs is hereby authorized to, and shall, enter into cooperative agreements with the Department of Human Services for the use by both Departments of existing community-based programs, management information and client tracking systems, facility certification systems, community intervention centers and other shared resources as deemed necessary or appropriate by both Departments.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-308

~~§ 7302-3.8.~~ Management information system--Integration with other management information systems--Access to confidential records and reports

A. ~~On or before October 1, 1996,~~ The Office of Juvenile Affairs shall implement an agency-wide management information system for all programs and services of the Office of Juvenile Affairs related to children, youth and families.

B. The management information system shall:

1. To the maximum extent possible, be based upon the integration, utilization and modification, as necessary, of existing information systems within the Office of Juvenile Affairs;
2. Provide for the security of and limited access to the information;
3. Include case specific information, including outcomes, and have the ability to monitor the status of children and youth receiving services through the Office of Juvenile Affairs;
4. Be capable of providing management reports and information regarding the various children and youth programs of the Office of Juvenile Affairs, and of providing aggregate information necessary for planning, monitoring and evaluation of said programs and services; and
5. Be designed so that management and analytical reports can be readily generated for those who require them.

C. 1. The management information system implemented by the Office of Juvenile Affairs shall be integrated with the child welfare management information system implemented by the Department of Human Services and to the extent possible with the Juvenile Justice Information System ~~by October 1, 1996.~~

2. The management information system shall be available to persons authorized to obtain confidential records and reports of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs pursuant to Article VII of the Oklahoma Juvenile Code.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-309

~~§ 7302-3.9.~~ Department planning process for services to children and youth

A. The Office of Juvenile Affairs shall establish a planning process that provides for collaborative ongoing planning for the development of divisional and agency goals and priorities for services to children and youth. Said planning process shall be developed with the assistance of the Policy Analysis Division or equivalent division within the Office of Juvenile Affairs and the department and division directors, other state agencies and agencies with whom the departments contract to provide services to children and youth, including designated Youth Services Agencies, and shall provide for identification and assessment of needs, establishment of goals and priorities, and program implementation and monitoring, in a manner that actively involves all divisions and units within divisions.

1. The Office of Juvenile Affairs shall develop a three- to five-year plan for children and youth services provided by the agency. The plan should be regularly reviewed and modified as necessary.

2. The Executive Director shall hold each department and division director accountable for the performance of the department or division in engaging collaboratively in the agency and in interagency planning with other state agencies and agencies with whom the Office of Juvenile Affairs contracts to provide services to children and youth, including Youth Services Agencies, for programs and services for children and youth.

3. The director of each division and administrator of each office shall actively participate and require the collaborative participation of department and division workers in interagency planning and coordination for children and youth services.

4. The director of each division and administrator for each office shall hold the administrator of each unit within the department or division responsible for the collaborative development and implementation of agency and division goals and priorities related to children and youth.

B. The unit, division, office and agency budget recommendations of the Office of Juvenile Affairs for services to children and youth shall be based upon documented needs, and the development of budget recommendations and priorities shall be closely integrated with agency and interagency program planning and management.

C. As a part of the program planning and monitoring processes of the Office of Juvenile Affairs, the Office shall examine its programs and services to children and youth to ensure that the practices within them do not operate to the detriment of minority children and youth.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-310

~~§ 7302-3.10.~~ Defining services and programs

The Office of Juvenile Affairs shall carefully define its services and programs as to their purpose, the population served, the needs of the community if the facility, program or service is community-based, and performance expectations. Planning for new programs and services and major modifications to existing ones shall be made only after evaluation of their effect on other existing programs and services and communication and coordination with other existing public and private children and youth service providers in order to assure successful and cost-effective implementation of the program. An evaluation component that includes monitoring and evaluation of client outcomes shall be incorporated into all of the programs and services of the Office of Juvenile Affairs to children and youth, whether provided directly by the agency or through a contract.

1. All programs and services shall be designed to ensure the accessibility of the program to the persons served. Provision for transportation, child care and similar services necessary in order to assist persons to access the services shall be made. If the service is provided in an office setting, the service shall be available during the evening, if necessary. Services may be provided in a school setting at the request of or with permission of the school.
2. Programs and services shall be targeted to the areas of the state having the greatest need for them. The programs and services shall be designed to meet the needs of the area in which they are located. Programs and services intended for statewide implementation shall be implemented first in those areas that have the greatest need for them.
3. Requests for proposals developed by the Office of Juvenile Affairs shall be based upon documented service needs and identified priorities. The request for proposals shall clearly identify the program or service requirements, the population to be served, and performance expectations. The agency shall adopt clear, written guidelines to ensure uniformity in the management, monitoring and enforcement of contracts for services. If in-state private providers are unable or unwilling to respond to the proposal, then out-of-state providers should be encouraged to respond.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-311

~~§ 7302-3.11.~~ Annual review of programs and services and implementation of Youthful Offender Act--Reports

A. The Office of Juvenile Affairs shall from time to time, but not less often than annually, review its programs and services and submit a report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Supreme Court of the State of Oklahoma, the Board of Juvenile Affairs, and the Oklahoma Commission on Children and Youth analyzing and evaluating the effectiveness of its programs and services. Such report shall include, but not be limited to:

1. An analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report;
2. A description of programs and services which should be implemented;
3. Relevant information concerning the number of children comprising the population of any facility operated by the Office of Juvenile Affairs during the period covered by the report;
4. An analysis and evaluation, by age, of the number of children assessed for literacy skills, the number who failed to demonstrate age-appropriate reading skills, and the number who were required to participate in a literacy skills improvement program; and
5. Such other information as will enable a user of the report to ascertain the effectiveness of the programs, services and facilities.

B. ~~Beginning July 1, 1998, and at least annually thereafter,~~ The Office of Juvenile Affairs shall **annually** analyze and evaluate the implementation of the Youthful Offender Act, the effectiveness of the Youthful Offender Act and any problems which have occurred which have limited the effectiveness of the Youthful Offender Act. The annual analysis and evaluation shall be incorporated in the report required by subsection A of this section.

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 4. FUNDS

§ 7-401

~~§ 7302-4.1.~~ Juvenile Detention Improvement Revolving Fund

A. There is hereby created in the State Treasury a revolving fund for the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs to be designated the "Juvenile Detention Improvement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies appropriated to the Juvenile Detention Improvement Revolving Fund and monies which may otherwise be available to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs for use as provided for in this section.

B. All monies appropriated to the fund shall be budgeted and expended by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs for the purpose of providing funds to counties to renovate existing juvenile detention facilities, to construct new juvenile detention facilities, to operate juvenile detention facilities and otherwise provide for secure juvenile detention services and alternatives to secure detention as necessary and appropriate, in accordance with state-approved juvenile detention standards and the State Plan for the Establishment of Juvenile Detention Services provided for in Section 7304-1.3 of this title. The participation of local resources shall be a requirement for the receipt by counties of said funds and the Department shall establish a system of rates for the reimbursement of secure detention costs to counties. The methodology for the establishment of said rates may include, but not be limited to, consideration of detention costs, the size of the facility, services provided and geographic location. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

1. ~~Beginning July 1, 1995,~~ ~~†~~The rate of reimbursement of approved operating cost shall be eighty-five percent (85%) for the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs and fifteen percent (15%) for the county.

2. ~~Beginning July 15, 1998,~~ ~~†~~The rate of reimbursement of approved operating cost shall be fifty percent (50%) for the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs and fifty percent (50%) for any county that has failed to establish the beds required by the provisions of subsection A of Section 7302-6.8 of this title.

3. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall approve only those applications for funds to renovate an existing juvenile detention facility or any other existing facility or to construct a new juvenile detention facility which contain proposed plans that are in compliance with state-approved juvenile detention standards.

4. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall approve only those applications or contracts for funds to operate juvenile detention facilities or otherwise provide for secure juvenile detention services and alternatives to secure detention which are in compliance with or which are designed to achieve compliance with the State Plan for the Establishment of Juvenile Detention Services provided for in Section 7304-1.3 of this title.

5. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall, from appropriated state monies or from available federal grants, provide for payment pursuant to contract for transportation personnel and vehicle-related costs and reimburse for eligible travel costs for counties utilizing the juvenile detention facilities identified in the "State Plan for the Establishment of Juvenile Detention Services" in accordance with the provisions of the State Travel Reimbursement Act and in accordance with Section 7304-1.3 of this title.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 4. FUNDS

§ 7-402

~~§ 7302-4.2.~~ Court and hearing costs of Office of Juvenile Affairs--Special agency account

There is hereby created in the State Treasury a special agency account for court and hearing costs of the Office of Juvenile Affairs. The money in the account shall be used only for court costs, court filing fees, witness fees, fees for court transcripts, audio tape duplication charges for Merit Protection hearings, service of process, costs for mailing legal documents, and expenses related to any case or proceeding within the official responsibility of the Office of General Counsel of the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 5. SUPERVISION AND PLACEMENT DUTIES

§ 7-501

STRICKEN

~~§ 7302-5.1. Intake, probation and parole services--Services related to serious and habitual offenders~~

A. The Office of Juvenile Affairs shall provide intake, and probation ~~and parole~~ services for juveniles in all counties not having a juvenile bureau and parole services in all counties of the state and may enter into agreements to supplement probationary services to juveniles in any county. The Office of Juvenile Affairs may participate in federal programs for juvenile probation officers, and may apply for, receive, use and administer federal funds for such purpose.

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7305-1.1.C

B. A pre-adjudicatory substance abuse assessment of a child may be conducted in conjunction with a court intake or preliminary inquiry pursuant to an alleged delinquent act or upon admission to a juvenile detention facility through the use of diagnostic tools including, but not limited to, urinalysis, structured interviews or substance abuse projective testing instruments.

1. Information gained from the substance abuse assessment pursuant to this subsection shall be used only for substance abuse treatment and for no other purpose. The results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding or as the sole basis for the revocation of a community-based placement or participation in a community-based program.

2. The results of the substance abuse assessment may be given to the child's intake, probation or parole counselor, the parent or guardian of the child or to the child's attorney. In accordance with ~~the guidelines established pursuant to the Serious and Habitual Juvenile Offender Tracking Program and Section 620.6 of this title~~, the counselor may also provide the results of the substance abuse assessment to medical personnel, therapists, school personnel or others for use in the treatment and rehabilitation of the child.

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CHANGE

§ 620.6 of tit.
10 needs to be
amended to
reflect SHO
changes.

C. ~~In accordance with the guidelines adopted pursuant to the Serious and Habitual Juvenile Offender Program, t~~The Office of Juvenile Affairs and the juvenile bureaus shall implement:

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1. Court intake risk-assessment for children alleged or adjudicated to be delinquent;
2. The imposition of administrative sanctions for the violation of a condition of probation or parole;
3. A case management system for ensuring appropriate:

- a. diversion of youth from the juvenile justice system,
- b. services for and supervision of all youth on pre-adjudicatory or postadjudicatory probation or on parole, and for juvenile offenders in the custody of the Office of Juvenile Affairs, and
- c. intensive supervision of ~~serious and habitual~~ juvenile offenders and communication between law enforcement and juvenile court personnel and others regarding such offenders; and

4. Guidelines for juvenile court personnel recommendations to district attorneys regarding the disposition of individual cases by district attorneys.

D. 1. The Office of Juvenile Affairs shall establish directly and by contract, ~~the services necessary to implement the Serious and Habitual Juvenile Offender Program~~ including, but not limited to:

STRICKEN

- a. misdemeanor and non-serious first-time offender programs,
- b. tracking and mentor services,
- c. weekend detention,
- d. five-day out-of-home sanction placements,
- e. short-term thirty-day intensive, highly structured placements,
- f. transitional programs,
- g. substance abuse treatment and diagnostic and evaluation programs, and
- h. day treatment programs.

2. In implementing these services, the Office of Juvenile Affairs shall give priority to those areas of the state having the highest incidences of juvenile crime and delinquency.

E. 1. The following entities shall conduct, upon adjudication of a child as a delinquent or in need of supervision unless such child has been previously assessed within the six (6) months prior to such intake, a literacy skills assessment:

- a. the Office of Juvenile Affairs,
- b. a first-time offender program within a designated youth services agency,
- c. any metropolitan county juvenile bureau, or

d. any county operating a juvenile bureau.

2. Such assessment shall be conducted through the use of diagnostic tools which include, but are not limited to:

a. structured interviews,

b. standardized literacy testing instruments which measure the educational proficiency of the child, and

c. any other measure used to determine:

(1) whether a child is reading at an age-appropriate level, and

(2) the child's capacity to read at such level.

3. The results of the literacy skills assessment required pursuant to this subsection shall be made available to the court by the district attorney for use in the disposition phase; provided, however, the results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding to determine whether a juvenile should be adjudicated. Provided, further, such results shall not be used as the sole basis for the revocation of a community-based placement or participation in a community-based program.

4. a. Upon request, the results of the literacy skills assessment shall be given to the following:

(1) the child's intake, probation or parole counselor,

(2) the parent or guardian of the child, or

(3) the child's attorney.

b. In accordance with ~~the guidelines established pursuant to the Serious and Habitual~~ Juvenile Offender **Tracking** Program and Section 620.6 of ~~this title~~, the counselor may also provide the results of the literacy skills assessment to therapists, school personnel or others for use in the training and rehabilitation of the child.

**NEW
CHANGE**

5. a. If the child is a juvenile placed in an institution or facility operated by the Office of Juvenile Affairs, the child shall be assessed and a literacy improvement program shall be implemented in accordance with Sections 7302- 6.1 and 7302-6.3 of this title.

b. If the child is adjudicated delinquent or in need of supervision or is being detained as part of a deferral of prosecution agreement, deferral to file agreement or a deferral sentence agreement, and the results of the literacy skills assessment show that the child is not reading at an age-appropriate level but has the capacity to improve his or her reading skills, the child shall be required to actively participate in a literacy skills improvement

program which may include, but not be limited to, a program of instruction through a public or private school, including any technology center school, of this state or any other state. The child shall provide documentation of substantial quantifiable literacy improvement, sufficient to demonstrate reading proficiency at an age-appropriate or developmentally appropriate level; provided, however, failure to demonstrate substantial quantifiable literacy improvement shall not be the sole basis for not dismissing a case against a child.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-502

~~§ 7302-5.2.~~ **Child adjudicated in need of supervision--Placement-- Rehabilitative facilities--Mental health and substance abuse treatment**

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A. Whenever a child who has been adjudicated by the court as a child in need of supervision has been committed to the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, the **Department Office** 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 under the operation of or licensure of the state, or in a state school for the mentally retarded if eligible for admission thereto. No child in need of supervision shall be placed in a **Department Office** -operated institution, other than a rehabilitative facility.

B. The ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs** may establish and maintain one or more rehabilitative facilities to be used exclusively for the custody of children in need of supervision. Each such facility shall be, primarily, a nonsecure facility having as its primary purpose the rehabilitation of children adjudicated to be in need of supervision. Such facility shall have a bed capacity for no more than twenty children, and shall minimize the institutional atmosphere and prepare the child for reintegration into the community. Provided however, that such facility may be designed and operated as a secure facility used exclusively for children in need of supervision whom the court has specifically found to be so unmanageable, ungovernable and antisocial that no other reasonable alternative exists for treatment or restraint other than placement in such a secure facility. Such facility shall not rely on locked rooms, fences, or physical restraints.

C. A child in need of supervision who has been found by a court to be a minor in need of treatment shall be placed as provided by Section 7303-8.4 of this title and the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-503

~~§ 7302-5.3. Delinquent children--Intent of Legislature--Powers and duties of Department Office~~

A. It is the intent of the Legislature of this state to provide for the creation of all reasonable means and methods that can be established by a state for:

1. The prevention of delinquency;
2. The care and rehabilitation of delinquent children; and
3. The protection of the public.

It is further the intent of the Legislature that this state, through the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, establish, maintain and continuously refine and develop a balanced and comprehensive state program for children who are potentially delinquent or are delinquent.

B. Except as provided in subsection C of this section, whenever a child who has been adjudicated by the court as a delinquent child has been committed to the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, the ~~Department Office~~ shall provide for placement pursuant to any option authorized by paragraphs 1 through 7 of this subsection; provided, nothing in this subsection shall be construed to establish a priority in regard to the selection of an option or to mandate the exclusive use of one particular option:

1. Place the child in a state training school or other institution or facility maintained by the state for delinquent children if the child has:
 - a. exhibited seriously violent, aggressive or assaultive behavior,
 - b. committed a serious felony constituting violent, aggressive and assaultive behavior,
 - c. habitually committed delinquent acts if such acts would constitute felonies if committed by an adult,
 - d. committed multiple serious delinquent acts, or
 - e. violated any condition of probation or parole,

to the extent that it is necessary for the protection of the public. For purposes of placement, all deferred prosecutions for serious, habitual, violent, aggressive or assaultive crimes shall count toward placement decisions;

2. Place the child in a facility maintained by the state for children, or in a foster home, group home, transitional living program or community residential center;
3. Allow the child his liberty, under supervision, in an independent living program;
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;
5. Place the child in a state school for mentally retarded, if the child is eligible for admission thereto;
6. Place the child in any licensed private facility deemed by the **Department of Juvenile Justice Office of Juvenile Affairs** to be in the best interest of the child; or
7. Place the child as provided by Section 7303-8.4 of this title and the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, if the delinquent child has been found by a court to be in need of mental health or substance abuse treatment.

C. The **Department Office** shall place priority on the placement of delinquent youth held in secure juvenile detention facilities.

D. Placement of a juvenile pursuant to this section or any other provision of law shall be the responsibility of the **Department of Juvenile Justice Office of Juvenile Affairs** and shall occur as soon as reasonably possible after adjudication and after the selected placement option becomes available.

The court shall not have authority to require specific placement of a juvenile in a time frame which would require the removal of any other juvenile from such placement.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-504

~~§ 7302-5.4.~~ Discharge of children adjudicated delinquent--Retention of custody and jurisdiction

A. Except as otherwise provided by law, all children adjudicated delinquent and committed to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall be discharged at such time as the ~~Department Office~~ 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 the ~~Department Office~~ retain legal custody. Following a hearing, the court may also order that a child adjudged delinquent and committed to the ~~Department Office~~ shall be discharged by the ~~Department Office~~ provided the child is on parole status and the court deems the discharge in the best interest of the child and public. The ~~Department Office~~ shall give a fifteen-day notice to the court and the district attorney before discharging from legal custody any child committed and confined in a secure facility.

B. Except as otherwise provided by law, all children adjudged delinquent and committed to the ~~Department of Justice~~ Office of Juvenile Affairs and not discharged under subsection A of this section shall be discharged when the child becomes eighteen (18) years of age, unless the ~~Department Office~~ is authorized by the court to retain custody of the child until nineteen (19) years of age. Upon the court's own motion or motion of the ~~Department Office~~ or the district attorney, which must be filed prior to the date the child becomes eighteen (18) years of age, the court, after notice to the delinquent child and to the parents and attorney of said child, may authorize the ~~Department Office~~ to retain custody of the child until he reaches nineteen (19) years of age in order for the child to complete the previously adopted plan of rehabilitation or achieve reasonable treatment objectives. If the court sustains a motion to retain custody, the delinquent child during the extended period shall be considered as a child for purposes of receiving services from the ~~Department Office~~. 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) years is considered an adult for purposes of other applicable law.

C. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall not place a child under ten (10) years of age in an institution maintained for delinquent children.

D. The court may retain jurisdiction over a child adjudged delinquent beyond the age of ~~seventeen (17)~~ eighteen (18) years to the extent necessary for the child to complete payment of ~~restitution or~~ court costs. The court may institute contempt proceedings pursuant to Sections 565 through 567 of Title 21 of the Oklahoma Statutes against any person adjudged delinquent and ordered to pay ~~restitution or~~ court costs who neglects or refuses to pay ~~such restitution or~~ court costs. Any child referred to in this subsection over whom the court retains jurisdiction solely for payment of ~~restitution or~~ court costs shall not be considered to be in the custody of or under the supervision of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs.

E. Following a hearing, the court may order that any child shall be discharged by the ~~Department of Juvenile Justice of the~~ Office of Juvenile Affairs provided the child is on parole status and the court deems the discharge in the best interest of the child and public. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall give a fifteen-day notice to the district attorney before discharging from legal custody any child committed and confined in a secure facility.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

PART 6. FACILITIES AND TRAINING PROGRAMS

§ 7-601

~~§ 7302-6.1.~~ Juveniles placed in Department-operated institutions and facilities--Powers and duties of Department Office

A. In addition to the other powers and duties prescribed by law, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall have the following duties and powers with regard to juveniles placed in Department Office-operated institutions and facilities:

1. Provide for the care, education, training, treatment and rehabilitation of juveniles who are placed in the institutions and facilities. The Department Office shall provide for a uniform system of assessment of the reading ability of each juvenile upon initial placement in a Department Office -operated institution or facility. The assessment shall include, but not be limited to, the following skills:

- a. the level of word decoding skills of the juvenile,
- b. the level of vocabulary and spelling ability of the juvenile, and
- c. the comprehension level of the juvenile.

The Department Office may give assistance to local school districts in providing an education to such juveniles, may supplement such education, and may provide facilities for such purposes. It shall be the duty of the Department Office to assure that juveniles in the aforesaid institutions and facilities receive educational services which provide each juvenile with a balanced and comprehensive reading program, which includes as its primary and foundational components:

- (1) an organized, systematic, explicit skills program that may include phonics, word recognition strategies and other word decoding skills to address the needs of the individual juvenile as determined by the entry level needs assessment,
- (2) a strong language arts and comprehension program that includes a balance of oral and written language, an ongoing individualized evaluation and diagnosis that informs the teacher and an assessment that assures accountability, and
- (3) writing, mathematics, science and vocational-technical education;

2. Transfer from a juvenile institution to another facility under the jurisdiction of the Department Office, a juvenile who has been adjudicated delinquent, if the Department Office believes it advisable to do so; transfer from a facility for juveniles in need of supervision to another such facility, a juvenile who has been adjudicated in need of supervision, provided that such transfer is consistent with the treatment needs of the juvenile; transfer from a juvenile institution or facility to a state school for the mentally retarded, any juvenile eligible for

admission thereto, if the juvenile appears to be in need of the care and treatment provided at such school; transfer from a facility for delinquent or in need of supervision juveniles to an appropriate facility or to the Department of Mental Health and Substance Abuse Services any juvenile found by the court to be a minor in need of treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and committed to inpatient mental health or substance abuse treatment as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. If a transfer is made pursuant to this paragraph, the **Department Office** shall comply with the notification requirements of Section 7303-5.4 of this title;

3. Release on parole a juvenile previously adjudicated to be delinquent, subject to terms and conditions specified by the **Department Office**, whenever the **Department Office** determines that such release will not be detrimental to society and that the juvenile is ready to be returned to the community and revoke said parole for violation of the specified terms or conditions of parole pursuant to the provisions of this section and the rules and procedures established by the **Department Office** for such revocation;

4. Release any juvenile from a juvenile institution for placement in a group home, transitional living program, independent living program, other community-based facility or program or out-of-home care subject to terms and conditions specified by the **Department Office**; and

5. Provide parole services for juveniles released on parole from juvenile institutions, and aftercare services for juveniles discharged from juvenile institutions or facilities. Persons designated as Juvenile Parole Officers by the **Department Office** shall have the power to serve process and to apprehend and detain juveniles and make arrests in accordance with the laws of the state.

B. The transfer of a juvenile from a nonsecure placement to a secure placement shall be subject to an administrative transfer hearing and any revocation of parole shall be subject to a parole revocation hearing.

1. In any administrative transfer or parole revocation proceeding, the following minimum standards shall apply:

a. the juvenile shall have the right to notice of the proposed transfer or parole revocation hearing and the alleged violation of administrative or parole rules on which the proposed transfer or parole revocation is based,

b. the juvenile shall have the right to representation by an attorney,

c. the juvenile shall have the right to present evidence on behalf of the juvenile, and

d. the juvenile shall have a right to bail, except that said right to bail shall not be construed to require that a juvenile who is in residence in a **Department Office** -operated institution or other facility at the time of an alleged violation leading to an administrative transfer proceeding be released from such institution or facility.

2. The situs of said hearings shall be the county in which the alleged violation of administrative or parole rules occurs. The judge having juvenile docket jurisdiction in said county shall aid the administrative transfer or parole revocation process of the **Department Office** by:

- a. determining eligibility for and amount of bail;
- b. deciding any intermediate custody or placement issue; and
- c. if legal counsel for the juvenile has not otherwise been obtained, appointing legal counsel for the juvenile and fixing the amount of compensation for the legal counsel. Said judge shall also determine if the juvenile is eligible for free legal services. If the juvenile is not eligible for free legal services, the court shall order the parents or legal guardian of the juvenile to pay for such services.

3. If legal counsel for the juvenile has not otherwise been obtained, the appointment of legal counsel for the juvenile, the setting of the amount of compensation for such counsel, and the determination of whether or not the juvenile is eligible for free legal services shall be provided for pursuant to the Indigent Defense Act; provided, however, in those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, the legal services shall be provided by the county indigent defender as provided by law. If the juvenile is not eligible for free legal services, the court shall order the parents or legal guardian of the juvenile to pay for such services.

C. The **Department Office** may participate in federal programs relating to delinquent juveniles, or juveniles in need of supervision, or institutions and services for such juveniles and apply for, receive, use and administer federal funds for such purposes.

D. The **Department Office** shall receive interest earnings on the investment by the State Treasurer of monies, to be credited to an agency special account, for the benefit of and held in trust for persons placed in the custody of the **Department Office** or in residence at institutions or facilities maintained by the **Department Office**.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-602

~~§ 7302-6.2. Methods of administration--Merit system--Employment of superintendent and other personnel--Criminal history records searches-- Superintendent as guardian~~

A. The Office of Juvenile Affairs shall establish and maintain such methods of administration, including those necessary to establish and maintain a merit system of personnel administration, and shall promulgate such rules as it deems necessary for the efficient and effective operation of the juvenile institutions and facilities operated by the **Department Office**.

B. The Executive Director of the Office of Juvenile Affairs shall employ and fix the duties and compensation of a superintendent, and such other personnel as the Executive Director deems necessary, for each of the juvenile institutions and facilities operated by the **Department of Juvenile Justice Office of Juvenile Affairs**. The Office shall promulgate, and in its hiring and employment practices, the Office shall adhere to, written minimum qualifications by position for personnel working with or around juveniles in said institutions and facilities. Such minimum qualifications shall be designed to assure that such personnel possess sufficient education, training, experience and background to provide adequate and safe professional care and services to said juveniles; and that the juveniles will not be exposed to abuse, deprivation, criminal conduct, or other unwholesome conditions attributable to employee incompetence or misconduct.

C. 1. The Office of Juvenile Affairs may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of investigating the criminal history of an employee or applicant. The Oklahoma State Bureau of Investigation may charge a search fee as provided in Section 150.9 of Title 74 of the Oklahoma Statutes. The fee shall be deposited in the OSBI Revolving Fund.

2. The Board of Juvenile Affairs shall promulgate rules for the Office of Juvenile Affairs to obtain national criminal history record searches in accordance with the requirements of Section 404.1 of this title for personnel described in subsection B of this section, except that such rules may permit employment of applicants pending receipt of the results of national criminal history record searches.

D. The superintendent of a juvenile institution or facility shall be the guardian of the person of each juvenile in the institution or facility for the limited purpose of providing care and protection for any life-threatening situation that may arise.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-603

~~§ 7302-6.3.~~ Rules, policies and procedures required in facilities

A. The Board of Juvenile Affairs shall promulgate written rules, outline policies and procedures governing the operation of those facilities operated by or through contract with the Office of Juvenile Affairs 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 the child's own clothing or individualized clothing which is clean. When a child is participating in an outdoor adventure program that takes the child away from the permanent facility, the child shall be provided with the opportunity to wash with soap and water daily;
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, as defined by Section 21 of Title 57 of the Oklahoma Statutes or as otherwise defined by rules promulgated by the Board of Juvenile Affairs, or to inspect for material harmful to minors, as defined by Section 1040.75 of Title 21 of the Oklahoma Statutes. Provided that, when based on legitimate facility interests of order and security as determined by the facility superintendent, mail addressed to a child or sent by a child may be read, censored, or rejected, except that mail addressed to a child from the attorney of the child or sent by the child to the attorney of said child shall not be opened, censored, or withheld in any way. The child shall be notified when incoming or outgoing mail is withheld in part or in full;
5. A child shall have reasonable opportunity to communicate and to visit with the child's 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~~ behavioral health services;

CHANGES
by
DMHSAS.

7. A child in the custody or care of the Office of Juvenile Affairs 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;

10. A child's ~~mental~~ behavioral 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 as defined by the regulations of the State Board of Licensed Social Workers; and

CHANGES
by
DMHSAS.

11. Upon leaving the custody of the Office of Juvenile Affairs, a child shall be afforded a copy of the literacy progress section of the individualized service plan developed for the child for continued use at the next school placement of the child.

C. Any contract or agreement between the Office of Juvenile Affairs and the Department of Mental Health and Substance Abuse Services for the care and treatment of children in the custody of the Office of Juvenile Affairs shall provide that the Department of Mental Health and Substance Abuse Services shall comply with the provisions of subsections A and B of this section and the provisions of Section 7302-6.4 of this title.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-604

§ ~~7302-6.4~~ Physical force, when authorized--Mechanical restraints

A. Use of physical force in institutions and other facilities operated by or through contract with the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs wherein children are housed shall be permitted only under the following circumstances:

1. For self-protection;
2. To separate juveniles who are fighting; or
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 or through contract with the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs or the Department of Mental Health and Substance Abuse Services wherein children are housed shall be minimal and shall be prohibited except as specifically provided for in the rules of each of the Departments.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-605

~~§ 7302-6.5.~~ Escape or run away from institutional placement

Upon discovery that a child has escaped or run away from an institutional placement, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs 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.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-606

~~§ 7302-6.6.~~ Central Oklahoma Juvenile Center--Supervision, management and control

A. The Office of Juvenile Affairs ~~through its Department of Juvenile Justice~~ shall have the supervision, management, operation and control of the children's institution located at Tecumseh, formerly known and designated as Girls' Town and now known as Central Oklahoma Juvenile Center, and all property, equipment and supplies related thereto. ~~All contracts, leases, or other agreements entered into by the Department of Human Services on behalf of the Center prior to July 1, 1995, shall be administered by the Department of Juvenile Justice.~~

B. The Central Oklahoma Juvenile Center shall maintain facilities and bed-space capacity for programs that are consistent with providing statewide juvenile justice and delinquency prevention services.

C. It shall be the duty of the State Fire Marshal and the Commissioner of Public Health, to cause regular, periodic, not less than quarterly, unannounced inspections of said institution, utilizing adequately trained and qualified inspection personnel, to determine and evaluate conditions and programs being maintained and carried on at said institution in their respective areas of agency jurisdiction. Such inspections shall include, but not be limited to, the following: Compliance with minimum fire, life and health safety standards; compliance with minimum standards governing general sanitation of the institution, with particular emphasis upon food storage, preparation, serving and transportation, respectively. Reports of such inspections will be made in writing, itemizing and identifying any deficiencies and recommending corrective measures, and shall be filed with the Board of Juvenile Affairs, the Executive Director of the Office of Juvenile Affairs, ~~the Deputy Director of the Department of Juvenile Justice~~ the Governor, the Attorney General, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Office of Juvenile System Oversight and the Oklahoma Commission on Children and Youth. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall file copies of the reports of the inspections and recommendations of the accrediting agencies listed in subsection B of this section with the Office of Juvenile System Oversight.

D. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs is authorized and directed to establish, subject to the limits of funds available therefor, a diversity of placement alternatives for children committed to the custody of the ~~Department~~ Office including, but not limited to, foster family homes, foster family group homes, and group homes. All child care services and facilities operated by the ~~Department~~ Office shall be accredited by the American Correctional Association, the Joint Commission on Accreditation of Hospitals or the Child Welfare League of America, as appropriate for the service or facility. The ~~Department~~ Office may directly contract for accreditation fees, training or training conferences with the organization accrediting the service or facility as required by this subsection.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.
END OF DOCUMENT

§ 7-607

~~§ 7302-6.7.~~ Lloyd E. Rader Children's Center--Administration and control

The official name and designation of the center for children situated at Sand Springs, Oklahoma, shall be Lloyd E. Rader Children's Center. The supervision, management, operation and control of the Center and all property, records, equipment and supplies related thereto shall be the responsibility of the Office of Juvenile Affairs ~~through its Department of Juvenile Justice.~~

~~All contracts, leases, or other agreements entered into by the Department of Human Services on behalf of the Center prior to July 1, 1995, shall be administered by the Department of Juvenile Justice.~~

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-608

§—7302-6.8. Expansion of preadjudicatory secure detention beds-- Responsibility for regional juvenile facility in southwestern part of state

A. Beginning July 1, 1995, the ~~Office of Juvenile Justice~~ Office of Juvenile Affairs shall oversee the expansion of the number of preadjudicatory secure detention beds available in this state. By July 1, 1996, the number of such beds shall be increased by one hundred nine beds or by the number necessary to result in a total of two hundred sixty-five such beds. It is the intent of the Legislature to establish such beds on a geographic basis throughout the state in order to provide more accessibility to services for all regions of the state. Therefore, such beds shall be established as follows: In Oklahoma County thirty-seven beds, in Tulsa County twenty-six beds, in Cleveland County twelve beds, in Lincoln County ten beds, in Comanche County six beds, in Beckham County six beds, in Texas County six beds and in Talihina in LeFlore County six beds. The six beds in Comanche County shall be regional detention beds and out-of-county placements shall be given priority for these beds. The beds established by this subsection shall be operated in accordance with Section 7304-1.3 of this title.

B. Effective July 1, 1995, the responsibilities for establishing and operating a regional juvenile facility in the southwestern part of the state shall be transferred to the Office of Juvenile Affairs. The facility shall include six transitional beds and seventy medium secure beds for such programs as the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs determines will most appropriately and effectively provide required services; provided, no more than thirty-two beds shall be used for any one type of program. It is the intent of the Legislature that the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs locate an existing facility that can be remodeled and used for this purpose.

C. Beginning July 1, 1998, detention beds constructed and operated by a county solely through revenues from county sources shall be exempt from the provisions of subparagraph 6 of Section 7302-9.3 of this title and from the provisions of the State Plan for the Establishment of Juvenile Detention Services adopted pursuant to subsection D of Section 7304-1.3 of this title.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-609

~~§ 7302-6.9. Facilities and residential programs--Legislative intent~~

It is the intent of the Legislature that the facilities and residential programs established or contracted by the Office of Juvenile Affairs ~~through the Department of Juvenile Justice~~ affirm the dignity of self and respect for others; promote the value of education, work, and self-discipline; and develop useful skills and abilities that can be applied when the juvenile is reintegrated into the community.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-610

~~§ 7302-6.10. Phil Smalley Children's Unit of Oklahoma Youth Center--Designation as Phil Smalley Employee Development Center~~

The official name and designation of the facility located at Norman, Oklahoma, formerly known and designated as the Phil Smalley Children's Unit of the Oklahoma Youth Center, shall be the Phil Smalley ~~Employee Development~~ Center. The supervision, management, operation and control of the Center and all property, equipment and supplies related thereto shall be the responsibility of the Office of Juvenile Affairs, except as provided for in interagency agreements between the Department of Mental Health and Substance Abuse Services and the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 7. DELINQUENCY AND YOUTH GANG INTERVENTION AND PREVENTION ACT

§ 7-701

§ ~~7302-7.1~~. Short title--Purpose--Intent

A. Sections 7302-7.1 through 7302-7.5 of this title shall be known and may be cited as the "Delinquency and Youth Gang Intervention and Prevention Act".

B. The Legislature recognizes that the economic cost of crime to the state and communities continues to drain existing resources, and the cost to victims, both economic and psychological, is traumatic and tragic. The Legislature further recognizes that many adults in the criminal justice system were once delinquents in the juvenile justice system. The Legislature also recognizes that the most effective juvenile delinquency programs are programs that prevent children from entering the juvenile justice system, meet local community needs, and have substantial community involvement and support. Therefore, it is the belief of the Legislature that one of the best investments of scarce resources available to combat crime is to counteract the negative social and economic factors that contribute to criminal and delinquent behavior by engaging youth who are determined to have the highest risk of involvement with gangs or delinquent behaviors or live in at-risk neighborhoods and communities in positive programs and opportunities at the local, neighborhood and community level.

C. For the purpose of reducing the likelihood of later or continued involvement in criminal or delinquent activities, the intent of the Legislature in enacting the Delinquency and Youth Gang Intervention and Prevention Act is to provide programs for adjudicated delinquents and highest risk children and their families who live in at-risk neighborhoods and communities, as defined in Section 7302-7.2 of this title, and to aid all communities in developing delinquency and gang intervention and prevention programs and activities.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-702

~~§ 7302-7.2. Definitions~~

For the purposes of the Delinquency and Youth Gang Intervention and Prevention Act:

1. "At-risk neighborhoods and communities" means residential and business areas within a specific political subdivision with a history of assault or battery offenses, shootings or firearm-related offenses, substance abuse-related offenses, property and theft-related offenses, and known gang activity that are documented by local law enforcement agencies, and an incidence of reported juvenile crime or referrals for juvenile court intakes, or some combination of both such incidence and referrals as approved by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs and substantiated by local law enforcement agencies, that is significantly higher than the statewide statistical mean for such offenses, incidence, referrals or combination;
2. "Children at highest risk of involvement with gangs or delinquent behaviors" means:
 - a. children and their family members living in at-risk neighborhoods and communities as defined in this section,
 - b. children living with family members who are gang members or associate with gang members,
 - c. children living with family members who have been adjudicated or convicted of a criminal offense,
 - d. children adjudicated delinquent and their family members, or
 - e. children who use alcohol or controlled substances or who have behavioral problems in school, with peers, family members or authority figures, or some combination thereof;
3. "Delinquency and gang intervention and prevention programs and activities" includes but is not limited to the following for participating youth: Intensive school and school-related programs, such as tutoring and other educational services, vocational training and counseling, employment services, recreational opportunities, and counseling services, such as family counseling, mental health counseling, substance abuse outpatient treatment, education programs, and programs and services involving the family members of participating youth; and
4. "Family members" means children, siblings, parents and other persons living in the immediate household.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.
END OF DOCUMENT**

§ 7-703

~~§ 7302-7.3.~~ Office of Juvenile Justice--Delinquency prevention, early intervention programs--Eligibility criteria

A. From funds appropriated for the Delinquency and Youth Gang Intervention and Prevention Act or otherwise available for that purpose, the Office of Juvenile Affairs ~~through its Department of Juvenile Justice~~ shall:

1. Issue requests for proposals or enter into agreements pursuant to the Interlocal Cooperation Act and contract ~~with eligible entities~~ for delinquency and gang intervention and prevention programs for children and their family members who live in at-risk neighborhoods and communities, as defined by Section 7302-7.2 of this title;

NEW

2. Provide information and technical assistance to individuals and entities receiving ~~grants or~~ contracts pursuant to the Delinquency and Youth Gang Intervention and Prevention Act, schools, neighborhood and community organizations, and agencies within the children and youth service system, as that term is defined ~~by~~ in the ~~Serious and Habitual~~ Juvenile Offender Tracking Act Program, for the purpose of assisting such agencies in making application for federal, state and private grants for delinquency and gang intervention and prevention programs; and

NEW
CHANGE

3. Coordinate efforts among the Office of Juvenile Affairs, Department of Human Services, State Department of Education, State Department of Health, Department of Mental Health and Substance Abuse Services, ~~State~~ Oklahoma Arts Council, Oklahoma Commission on Children and Youth, the Oklahoma Health Care Authority, 4-H Clubs, Oklahoma Cooperative Extension Service and other organizations identified by the ~~Department of Juvenile Justice Office of Juvenile Affairs~~ that provide services to children and youth on the creation of an out-of-school resource center subject to the availability of funds.

NEW

B. The ~~Department of Juvenile Justice Office of Juvenile Affairs~~, with the assistance of and information provided by the Oklahoma Commission on Children and Youth and the Oklahoma State Bureau of Investigation, shall establish criteria and procedures for:

1. Identifying at-risk neighborhoods and communities, as defined by Section 7302-7.2 of this title, for the purposes of determining eligibility for any grants for at-risk areas available pursuant to the Delinquency and Youth Gang Intervention and Prevention Act; and

2. Determining eligibility of individuals and other organizations seeking other grants pursuant to the Delinquency and Youth Gang Intervention and Prevention Act.

The Oklahoma Commission on Children and Youth and the Oklahoma State Bureau of Investigation shall provide the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs with information and assistance, as requested by the ~~Department~~ Office, for the purpose of establishing the criteria required by this section.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-704

~~§ 7302-7.4. Eligibility for grants or contracts--Proposal criteria--Duties of recipients~~

A. The Office of Juvenile Affairs shall establish procedures and criteria for selecting and implementing program models and ~~issuing and submitting grant proposals~~ **awarding contracts**. The Board of Juvenile Affairs shall promulgate rules as necessary for the implementation of the Delinquency and Youth Gang Intervention and Prevention Act.

NEW

B. In order to be eligible for a ~~grant or~~ contract in an at-risk neighborhood or community, as defined by Section 7302-7.2 of this title, pursuant to the Delinquency and Youth Gang Intervention and Prevention Act the proposal shall, at minimum:

NEW

1. Be ~~a joint proposal~~ made by an individual or organization, a neighborhood or community organization, a municipality or county or a municipal or county agency from the at-risk neighborhood or community, ~~and one or more agencies or organizations within the children and youth service system~~. If a school or local law enforcement agency is not a **joint** participant in the **proposal contract**, the **proposal contract** shall document and describe the active participation in and support of either the local school or local law enforcement agency in the program and activities for which the **proposal contract** is submitted;

NEW

2. Be a program or activity for children at highest risk of involvement in gangs or delinquent behaviors, as defined by Section 7302-7.2 of this title, and their family members;

3. Describe the respective roles and responsibilities for the administration and operation of the program and activities, including but not limited to the designation of the entity responsible for the receipt and expenditure of any funds awarded pursuant to the Delinquency and Youth Gang Intervention and Prevention Act;

4. Specifically identify the at-risk neighborhood or community where the programs and activities will be implemented and provide either statistical information concerning the at-risk area or a letter of support from a local school or local law enforcement agency;

5. Describe how the program will coordinate and cooperate with programs and services administered by the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, the Department of Human Services, the State Department of Education, and other state or local agencies, such as law enforcement, courts and other agencies within the juvenile, children and youth service system; and

6. Provide the program and activities on-site in a school, community center, or other similar location within the identified at-risk neighborhood or community.

C. In order to be eligible for training or continuing education ~~grants~~ contracts or any other contracts pursuant to the Delinquency and Youth Gang Intervention and Prevention Act, the ~~proposal~~ contract shall, at a minimum:

1. Describe the respective roles and responsibilities for the administration and operation of the training or activity, including but not limited to, the designation of the entity responsible for the receipt and expenditure of any funds awarded pursuant to the Delinquency and Youth Gang Intervention and Prevention Act; and

2. Describe how the training or activity will coordinate and cooperate with existing programs and services administered by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, the Department of Human Services, the State Department of Education, and other state or local agencies, such as law enforcement, courts and other agencies within the juvenile, children and youth service system.

D. Each entity receiving a ~~grant or~~ contract pursuant to the Delinquency and Youth Gang Intervention and Prevention Act shall work with local community leaders, neighborhood associations, direct service providers, local school officials, law enforcement and other stakeholders to create a local youth and gang violence coordinating council to help facilitate the implementation of the program. The entity shall also submit an annual evaluation report to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, by a date subsequent to the end of the contract period as established by the ~~Department~~ Office, documenting the extent to which the program objectives were met and any other information required by the ~~Department~~ Office.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-705

~~§ 7302-7.5.~~ Responsibility for implementation and evaluation of act-- Contracts with eligible entities--Outcome-based performance reports

A. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall have the responsibility for implementation and evaluation of the Delinquency and Youth Gang Intervention and Prevention Act and any modifications thereto.

B. Any contract executed by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs with an eligible entity on and after the effective date of this act for delinquency prevention and early intervention programs, subject to the Delinquency and Youth Gang Intervention and Prevention Act, shall require the eligible entity to prepare and submit to the ~~Department~~ Office, in a manner prescribed by the ~~Department~~ Office, an outcome-based performance report including, but not limited to, the following:

1. A description of the target population, service eligibility criteria, and risk factors;
2. A description of program services, the number of clients referred each year, the number of clients served each year, and the number of clients discharged each year;
3. The average cost per client participating in program services each year; and
4. Performance measures referencing service completion and recidivism which employ uniform definitions developed by the ~~Department~~ Office.

C. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall submit to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor by January 15 of each year, an annual report, including a summary detailing the following information derived from the outcome-based performance reports submitted by the eligible entities pursuant to the provisions of subsection A of this section and other information available to the ~~Department~~ Office:

1. Total amount of funds per state fiscal year expended for the delinquency prevention programs subject to the Delinquency and Youth Gang Intervention and Prevention Act;
2. Average expenditures per juvenile during the most recent state fiscal year;
3. Analyses of the nature and effectiveness of gang-related delinquency prevention and early intervention programs provided by eligible entities pursuant to contracts;
4. Effectiveness of each of the programs provided by the eligible entities;
5. Recommendations regarding distribution of the funds based upon the effectiveness of the programs provided by the eligible entities; and

6. Any other information or recommendations deemed necessary by the Board of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

PART 8. JUVENILE OFFENDER VICTIM RESTITUTION WORK PROGRAM

§ 7-801

~~§ 7302-8.1.~~ Juvenile Offender Victim Restitution Work Program

A. There is hereby created a program of juvenile crime victim restitution to be administered by the Office of Juvenile Affairs ~~through its Department of Juvenile Justice~~. The program shall be known as the "Juvenile Offender Victim Restitution Work Program".

B. The Board of Juvenile Affairs shall promulgate rules necessary for the implementation of the provisions of this section. Until the rules are promulgated by the Board, the rules promulgated by the Commission for Human Services shall remain in effect.

C. The programs developed under the provisions of this section shall provide restitution to a victim by requiring the juvenile to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. Restitution shall be made through the employment of the juvenile in work programs. The supervised work or service program shall not deprive the juvenile of schooling which is appropriate to the age, need, and specific rehabilitative goals of the juvenile. The program shall not prohibit the juvenile from fulfilling restitution obligations through jobs the juvenile has found, by performing volunteer services for the community, or by doing work for the victim.

D. Agreements for participation in the programs under this section may include restitution not in excess of actual damages caused by the juvenile which shall be paid from the net earnings of the juvenile received through participation in a constructive program of service or education acceptable to the juvenile, the victim, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, the district attorney and/or the district court. During the course of such service, the juvenile shall be paid no less than the federal minimum wage. In considering a restitution agreement, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, the district attorney and/or the district court shall take into account the age, physical and mental capacity of the juvenile. The service shall be designed to relate to the juvenile a sense of responsibility for the injuries caused to the person or property of another. If a petition has not been filed, the district 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 seventy-five percent (75%) or more of the net earnings of the juvenile shall 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 seventy-five percent (75%) or more of the net earnings of the juvenile shall be used for restitution.

E. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs may enter into contracts with private service providers for implementation of the program required by this section. The ~~Department Office~~ may require, as a condition of the contract, that the service provider pay restitution directly to the victim or victims and pay any amounts due to the juvenile directly to the juvenile. The records of any service provider that contracts with the ~~Department Office~~ pursuant to this section shall be subject to inspection by any employee of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs designated by the Executive Director of the Office of Juvenile Affairs. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs may subsidize the employment of a juvenile for the purposes of participation in a work program as provided by this section.

F. Any person, entity or political subdivision who is an employer of juveniles or recipient of services from a juvenile, pursuant to an agreement with the Juvenile Offender Victim Restitution Work Program shall not be liable for ordinary negligence for:

1. Damage to the property of the juvenile or injury to the juvenile except as to the liability established by the Workers' Compensation Act if the juvenile is covered thereunder; or
2. Damage to any property or injury to any person which results from the services of the juvenile pursuant to this section.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

**PART 9. ~~SERIOUS AND HABITUAL~~ JUVENILE OFFENDER TRACKING
PROGRAM ACT**



NEW
CHANGE

§ 7-901

§ ~~7302-9.1~~. Purpose--Short title

A. There is hereby created the ~~Serious and Habitual~~ Juvenile Offender Tracking Program Act for the purpose of:

1. Establishing an accurate and accessible data base with information on juvenile offenders readily available to law enforcement agencies, juvenile court personnel, district attorneys, and others who require such information; and

~~2. Establishing a case management system for individual juvenile offenders that includes intensive supervision of serious or habitual juvenile offenders; and~~

~~3.~~ 2. Enhancing community control of crime through information sharing regarding ~~serious and habitual~~ juvenile offenders that can be used by patrol officers and criminal investigators for the early identification of offenders and assist in the reduction of crime.

B. Sections 7302-9.1 through 7302-9.6 of this title shall be known and may be cited as the "~~Serious and Habitual~~ Juvenile Offender Tracking Program Act".

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-902

~~§ 7302-9.2. Definitions~~

As used in the Oklahoma Juvenile Code:

1. "Agencies and programs comprising the juvenile justice system" means:

- a. the courts, the District Attorney's Council and offices of the district attorneys, state and local law enforcement agencies, juvenile bureaus, the Department of Human Services, the ~~Department of Juvenile Justice of the~~ Office of Juvenile Affairs, the Oklahoma Commission on Children and Youth, the Department of Corrections, the Criminal Justice Resource Center, any other state agency responsible for the care, custody or supervision of youth alleged or adjudicated to be delinquent, and
- b. to the extent that they are responsible for the provision of services to youth alleged or adjudicated to be delinquent, including but not limited to educational, treatment or residential services, local school districts and technology center schools and other public and private agencies not otherwise specifically included in subparagraph a of this paragraph, comprising the "children and youth service system" as defined by Section 600 of this title;

~~2. "Felony act" or "felony offense" means any criminal offense that would constitute a felony crime if committed by an adult;~~

~~3. "Habitual criminal acts" means three separate delinquency adjudications for the commission of felony acts. The felony acts relied upon shall not have arisen out of the same transaction or occurrence or series of events related in time and location;~~

~~4. 2.~~ "Juvenile court personnel" means those persons responsible for juvenile court intake, probation and parole supervision and services to youth alleged or adjudicated to be delinquent;

~~5. 3.~~ "Juvenile Justice Information System" means the automated information system established by Section 7302-9.6 of this title;

~~6. 4.~~ "Juvenile offender" means a delinquent child or juvenile as defined by Section 7301-1.3 of this title;

~~7. "Sanction" means a consequence imposed upon a juvenile offender:~~

~~a. as a result of a criminal act, and~~

~~b. as a result of a violation of a condition of probation or parole;~~

~~8. "Serious act" means any crime specified by subsection A of Section 7306-1.1 of this title;~~

~~9. 5. "Serious and Habitual Juvenile Offender Tracking Program" means the program of information, information sharing, and case tracking, case management, supervision and sanctions established by Section 7302-9.3 of this title; and~~

NEW
CHANGE

~~10. "Serious juvenile offender" and "habitual juvenile offender" means persons under eighteen (18) years of age who have been adjudicated delinquent for the commission of serious acts or habitual criminal acts and are subject to the Serious and Habitual Juvenile Offender Program in accordance with the criteria established pursuant to Section 7302-9.3 of this title.~~

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 7-903

~~§ 7302-9.3. Serious and Habitual Juvenile Offender Program--Components~~

NEW
CHANGE

The ~~Serious and Habitual Juvenile Offender~~ Tracking Program shall include, but not be limited to:

1. The Juvenile Justice Information System pursuant to the provisions of Section 7302-9.6 of this title; and

2. Specific procedures for identifying juvenile offenders ~~who have committed a serious act or habitual criminal acts~~ for the purposes of ~~intensive supervision~~ and communication between law enforcement and juvenile court personnel and others regarding said offenders;

3. ~~Court intake risk assessment for children alleged or adjudicated to be delinquent;~~

4. ~~Structured decision-making instruments utilizing risk assessment, offense, needs assessment, and other appropriate criteria for determining the imposition of appropriate specific sanctions for:~~

~~a. youth adjudicated delinquent, and~~

~~b. the violation of a condition of probation or parole;~~

5. ~~A case management system for ensuring appropriate:~~

~~a. diversion of youth from the juvenile justice system,~~

~~b. services for and supervision of all youth on pre-adjudicatory or postadjudicatory probation or on parole and for juvenile offenders in the custody of the Department of Juvenile Justice, and~~

~~c. intensive supervision of serious juvenile offenders and habitual juvenile offenders and communication between law enforcement and juvenile court personnel and others regarding said offenders;~~

6. ~~Detention criteria, the uniform statewide application of said detention criteria, and guidelines for the use of secure detention. Said guidelines shall provide for priority to be given to the use of juvenile detention facilities for the detention of serious juvenile offenders and habitual juvenile offenders through provisions requiring the removal from detention of a juvenile with a lower priority status if an empty detention bed is not available at the time of referral of a juvenile with a higher priority status and if the juvenile with a~~

STRICKEN

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TO 7304-
1.1.D

~~higher priority status would be more of a danger to the public than the juvenile with the lower priority status;~~

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1.1.D

NOTE: REFER
TO 7302-5.1.D

~~7. Guidelines for the imposition of sanctions for any criminal offenses committed by juveniles and for probation and parole violations;~~

STRICKEN

~~8. Guidelines for juvenile court personnel recommendations to district attorneys regarding the disposition of individual cases by district attorneys; and~~

~~9. Guidelines for the disposition of individual cases by district attorneys.~~

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 7-904

~~§ 7302-9.4.~~ **Implementation of Program--Duties of state and local agencies**

For the purpose of achieving full implementation of the ~~Serious and Habitual~~ Juvenile Offender Tracking Program, the ~~Department of Juvenile Justice of the~~ Office of Juvenile Affairs, the juvenile bureaus, the District Attorney's Council, the Oklahoma State Supreme Court as authorized and directed by Section 7302-2.3 of this title and Section 23 of Title 20 of the Oklahoma Statutes, the Oklahoma Commission on Children and Youth, the Oklahoma State Bureau of Investigation, local law enforcement agencies, and other agencies comprising the juvenile justice system shall:

- a. develop and implement the ~~Serious and Habitual~~ Juvenile Offender Tracking Program,
- b. develop and implement the Juvenile Justice Information System,
- c. adopt rules, policies, procedures, standards, protocols and guidelines, as appropriate, for the development and implementation of the ~~Serious and Habitual~~ Juvenile Offender Tracking Program and the Juvenile Justice Information System, and
- d. enter into contracts or interagency agreements under the Interlocal Cooperation Act, as appropriate for the purpose of implementing the ~~Serious and Habitual~~ Juvenile Offender Tracking Program and the Juvenile Justice Information System.

**NEW
CHANGE**

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 7-905

~~§ 7302-9.6.~~ **Juvenile Justice Information System--Functions--Duties of state and local agencies--Plan for implementation**

A. For the purpose of information sharing and management of the ~~Serious and Habitual~~ Juvenile Offender Tracking Program, there is hereby created the Juvenile Justice Information System. The information system shall be an automated, data-based, system for tracking juvenile offenders from arrest through final closure of the case and shall include information provided by all of the components of the juvenile justice system in accordance with the provisions of the ~~Serious and Habitual~~ Juvenile Offender Tracking Program Act. The information system shall be fully integrated with other information systems related to services to children and youth and shall:

1. Be based upon the integration, utilization and modification, as necessary, of existing information systems;
2. Provide for the accuracy of the information and for the security of and limited access to the information;
3. Include case specific information, including client outcomes, and have the ability to monitor juveniles in the juvenile justice system; and
4. Be capable of providing management reports and information to the various components of the juvenile justice system, and of providing aggregate information necessary for planning, monitoring, evaluating and managing programs and services provided to youthful offenders as well as for system-wide analysis of the ~~Serious and Habitual~~ Juvenile Offender Tracking Program.

B. The ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs** of the Office of Juvenile Affairs, the juvenile bureaus, the Criminal Justice Resource Center, the Office of the Court Administrator, and other agencies and programs comprising the juvenile justice system, including but not limited to law enforcement and district attorneys, in accordance with guidelines established by the ~~Serious and Habitual~~ Juvenile Offender Tracking Program Implementation Task Force, shall jointly:

1. Identify information to be shared by agencies on a regular basis;
2. Develop procedures for processing case-profiles as cases move through agencies that come in contact with juvenile offenders;
3. Establish training programs in the use of the system;

NEW
CHANGE

4. Conduct a pilot project to test the system; and

5. At least annually, evaluate the plan for full statewide implementation of the Juvenile Justice Information System and submit any necessary modifications of the existing plan to the ~~Serious and Habitual~~ Juvenile Offender Tracking Program Implementation Task Force and to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and each agency affected by said plan.

**NEW
CHANGE**

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE III. 2-- CUSTODY AND COURT PROCEEDINGS
PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING
OF PETITION

§ 2-101

~~§ 7303-1.1.~~ **Taking of child into custody--Detention--Medical treatment--Mental Behavioral health treatment--Hearing on order for medical treatment**

CHANGES
by
DMHSAS.

A. A child may be taken into custody prior to the filing of a petition alleging that the child is delinquent or in need of supervision:

1. By a peace officer, without a court order for any criminal offense for which the officer is authorized to arrest an adult without a warrant, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child 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. By an employee of the court without a court order, if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child 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;

3. Pursuant to an order of the district court issued on the application of the office of the district attorney. The application presented by the district attorney shall 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 probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the court;

4. By order of the district court pursuant to subsection E of this section when the child is in need of medical or ~~mental behavioral~~ **mental behavioral** health treatment or other action in order to protect the child's health or welfare and the parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or ~~mental behavioral~~ **mental behavioral** health treatment or other action; and

CHANGES
by
DMHSAS.

5. Pursuant to an emergency ex parte or a final protective order of the district court issued, **at the request of a parent or legal guardian,** pursuant to the Protection from Domestic Abuse Act.

Any child referred to in this subsection shall not be considered to be in the custody of the Office of Juvenile Affairs.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision pursuant to subsection A of this section, the child shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the child's parent, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to the court at the time fixed if a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment. In addition, if a parent, legal guardian, legal custodian, attorney or other responsible adult is notified that the child has been taken into custody, it shall be a misdemeanor for such person to refuse to assume custody of the child within a timely manner. If detained, the child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court. If no judge be available locally, the person having the child in custody shall immediately report the detention of the child to the presiding judge of the judicial administrative district, 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 secure juvenile detention center, beyond the ~~next two (2)~~ second judicial days unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child. The child shall be present at the detention hearing or the image of the child may be broadcast to the judge by closed-circuit television or any other electronic means that provides for a two-way communication of image and sound between the child and the judge. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. 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, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court, or be detained pursuant to Article IV of the Oklahoma Juvenile Code in such place as shall be designated by the court, subject to further order.

REVISED

C. 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 the health of the child, 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 the child's parent, legal guardian, legal custodian, or other person having custody and control of the child 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 child's parent, legal guardian, legal custodian, or other person legally competent to authorize said medical treatment. The child's parent, legal guardian, legal custodian, or other person having custody and control 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.

D. A child who has been taken into custody as otherwise provided by this Code who appears to be a minor in need of treatment **as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act** may be admitted to a ~~mental health or substance abuse~~ **behavioral health** treatment facility ~~on an emergency basis or for an inpatient evaluation or for treatment only~~ in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. The child's parent, legal guardian, legal custodian, or other person having custody and control shall be responsible for such ~~mental~~ **behavioral** health 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 ~~mental~~ **behavioral** health evaluation or treatment shall have any liability, civil or criminal, for giving such authorization.

CHANGES by DMHSAS.

E. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the child's health or welfare and the parent, legal guardian, legal custodian, or other responsible adult having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the child's health or welfare, the court may issue an emergency ex parte order upon application of the district attorney of the county in which the child is located. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the child's health or welfare. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, legal guardian, legal

custodian, or other responsible adult having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this section, whenever a child is in need of medical treatment to protect the child's health or welfare, or whenever any other action is necessary to protect the child's health or welfare, and the child's parent, legal guardian, legal custodian, or other person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the district attorney of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, legal guardian, legal custodian, or other person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, legal guardian, legal custodian, or other person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

b. 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 subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

**PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING
OF PETITION**

§ 2-102A

~~§ 7303-1.2. Personal jurisdiction~~

~~A. 1. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Section 7303-1.1 of this title, the district court of the county in which a child:~~

~~a. resides,~~

~~b. is found, or~~

~~c. is alleged to be or is found to be in need of supervision,~~

~~shall have jurisdiction of any child who is or is alleged to be in need of supervision and shall have jurisdiction of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless of where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall have jurisdiction of any other adult person living in the home of such child. For any child who is or is alleged to be delinquent, the district court of the county where the cause of action arose shall have jurisdiction of the child and of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall have jurisdiction of any other adult person living in the home of such child.~~

A. 1. Upon the filing of a petition alleging the child to be in need of supervision, or upon the assumption of custody pursuant to Section 7303-1.1 of this title, the district court of the county shall have jurisdiction where a child:

a. resides, or

b. is found, or

c. is alleged to be or is found to be in need of supervision.

~~2. When jurisdiction shall have been obtained over a child who is or is alleged to be in need of supervision, such may be retained until the child becomes eighteen (18) years of age and when jurisdiction shall have been obtained over a child who is or is alleged to be a delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion, motion by the district attorney or motion by the Department of Juvenile Justice, as provided in subsection B of Section 7302-5.4 of this title.~~

Modified
from A.1,
above.

2. The court shall have jurisdiction of the parent, legal custodian, legal guardian or stepparent of the child or any adult person living in the home of the child regardless of where the parent, legal custodian, legal guardian or stepparent or adult person living in the home is found.

Modified from A.1, above.

~~3. For the convenience of the parties and in the interest of justice, a proceeding under the Oklahoma Juvenile Code, Section 7301-1.1 et seq. of this title, may be transferred to the district court in any other county.~~

3. When jurisdiction has been obtained over a child who is or alleged to be in need of supervision, such may be retained until the child becomes eighteen (18) years of age.

Modified from A.2, above.

~~4. Any arrest or detention under the Oklahoma Juvenile Code or any adjudication in a juvenile proceeding shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.~~

Moved to 7303-5.3 NEW G

B.1. Upon the filing of a petition alleging the child to be delinquent or upon the assumption of custody pursuant to Section 7303-1.1 of this title, the district court of the county where the delinquent act occurred shall have jurisdiction of the child and of the parent, guardian, legal guardian or stepparent of said child regardless of where the parent, guardian, legal guardian or stepparent is found and shall have jurisdiction of any other adult living in the home of the child.

Modified from A.1, above.

2. When jurisdiction has been obtained over a child who is or is alleged to be delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion, motion by the district attorney or motion by the Office of Juvenile Affairs as provided in subsection B of Section 7302-5.4 (2-504) of this title.

Modified from A.2, above.

3. The juvenile proceeding may be filed before the child becomes eighteen (18) years of age or within one (1) years after the date of the eighteenth birthday of the child if the underlying act would constitute a felony if committed by an adult.

Modified & Moved from 7303-4.3.A

~~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 Section 7303-1.1 of this title may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another district court within the state. Any adjudication and disposition~~

Moved to NEW # C below.

~~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 can issue any temporary order or grant any interlocutory relief authorized by this Code notwithstanding the fact that another district court within the state has jurisdiction of the child.~~

STRICKEN

C. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 7303-1.1 (1-101) of this title may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another district court within the state. Any adjudication and disposition made by the court in which said petition is filed shall control over prior orders in regard to the child.

Moved from # B above.

~~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. Where the other proceeding is pending in the same judicial district in which the juvenile petition is filed, the chief judge of the judicial district shall determine if the proceedings shall be consolidated and, if consolidated, which judge shall try the issues when the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed.~~

STRICKEN
Issues of transfer addressed in Venue.

D. Except as otherwise provided in the Oklahoma Juvenile Code, a child who is charged with having violated any state statute or municipal ordinance other than those enumerated in section 7306-1.1, 7306-2.5 or 7306-2.6 of this title shall not be tried in a criminal action but in a juvenile proceeding.

Moved from 7303-4.3.A.

E. If, during the pendency of a 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 or municipal 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 the 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 the child to the custody of some suitable person to be brought before the juvenile division.

Modified & Moved from 7303-4.3.A.

F. Nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by the municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.

Moved from 7303-4.3.A.

~~E. 1. A municipality with a population of at least twenty-five thousand (25,000) may, by written resolution filed with the district court as defined in this subsection, assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating any municipal ordinance identified in the resolution. Any other municipality may enter into an interlocal cooperation agreement with the district court pursuant to the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, to assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating any municipal ordinance as agreed by the district court, the district attorney and the municipality. For the purposes of this subsection, "district court" shall mean the district court judicial district or districts in which the contracting municipality is situated. The chief juvenile judge of the district court judicial district is hereby authorized to enter into the interlocal cooperation agreement as provided for in this section for and on behalf of said judicial district if the judge determines that the agreement is constitutional and complies with state and federal law. Provided, if there is no chief juvenile judge in the judicial district, then the presiding judge of the judicial administrative district that includes the contracting judicial district may enter into the agreement for and on behalf of said judicial district if the judge determines that the agreement is constitutional and complies with state and federal law.~~

Modified & moved to New Law *Jurisdiction of Municipip.*

2-102B

A.1

A.2

A.3

~~2. A child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to truancy may be held pursuant to Section 10-109 of Title 70 of the Oklahoma Statutes. In no event shall the child be placed in a jail, lockup, or detention facility. In no event shall the child be placed in a juvenile detention facility for more than twenty-four (24) hours, excluding weekends and legal holidays, prior to an initial court appearance and for an additional twenty-four (24) hours, excluding weekends and legal holidays, immediately following an initial court appearance; provided, however, this provision shall not restrict or prohibit placing the child in a community intervention center pursuant to Section 7302-3.5 of this title.~~

Modified & moved to New Law *Juris. of Municipip.*

2-102B

B.1

B.3

~~3. A child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to curfews may be held temporarily under the custodial care of a peace officer or other person employed by a police department only until the child's parent, legal guardian, legal custodian, attorney or other responsible adult assumes custody or, if such a person cannot be located within a reasonable time of the taking of the child into custody or if such a person refuses to assume custody, until temporary shelter is found for the child. In no event shall the child be placed in a jail, lockup, or adult detention facility. In no event shall the child be placed in a juvenile detention facility for more than twenty-four (24) hours, excluding weekends and legal holidays, prior to an initial court~~

Modified & moved to New Law *Juris. of Municipip.*

2-102B

B.2

B.3

~~appearance and for an additional twenty-four (24) hours, excluding weekends and legal holidays, immediately following an initial court appearance; provided however, this provision shall not restrict or prohibit placing the child in a community intervention center pursuant to Section 7302-3.5 of this title. The temporary custody provided for by this paragraph shall be utilized as a means of returning the child to the child's home or other place of shelter.~~

Modified
& moved
to New
Law *Juris.*
of *Municip.*

2-102B
B.2
B.3

~~4. Notwithstanding any other provision of this Code, a child less than eighteen (18) years of age, who is taken into custody for the alleged violation of a municipal ordinance, and who can be prosecuted in municipal court for such offense pursuant to jurisdiction assumed by the municipal court pursuant to the provisions of paragraph 1 of this subsection, may be temporarily detained by the municipality in a municipal juvenile facility, as defined by this paragraph, but only pursuant to the following conditions:~~

Modified
& moved
to New
Law *Juris.*
of *Municip.*
2-102B
B-4

~~a. the municipality shall immediately take all reasonable steps to attempt to locate the child's parent, legal guardian, legal custodian, attorney or another responsible adult and determine if said parent, legal guardian, legal custodian, attorney or other responsible adult is willing to appear at the municipal juvenile facility and assume personal custody of the child upon the child's release from such facility,~~

~~b. the child shall be released to the personal custody of the child's parent, legal guardian, legal custodian, attorney or other responsible adult as soon as practicable and upon the written promise of such person to return the child to municipal court to answer the municipal charges on the date and at the time set by the municipal court and to assume responsibility for costs for damages by the child if the child causes damages while committing any acts in violation of municipal ordinances listed in this section after being released. Municipalities may enact ordinances providing penalties for failure to comply with the written promise and for refusal to assume custody of a child in a timely manner,~~

~~c. the child shall be detained in the municipal juvenile facility for no longer than twenty-four (24) hours; provided, if the child's parent, legal guardian, legal custodian, attorney or other responsible adult fails to appear at the municipal juvenile facility and assume personal custody of the child within said twenty-four-hour period, then custody or release of the child shall be determined pursuant to the provisions of Section 7303-1.1 of this title,~~

~~d. the child shall be provided with adequate fresh drinking water,~~

~~e. the child shall be provided with adequate food not less than three times in a twenty-four-hour period,~~

~~f. the child shall be provided with adequate bathroom facilities and bedding, and~~

~~g. the child shall be provided with any necessary medical care and treatment.~~

Modified
& moved
to New
Law *Juris.*
of *Municip.*
2-102B
B-4

~~Prior to the temporary detention of any child pursuant to the authority of this subsection, the municipal juvenile facility shall be certified by the Office of Juvenile Affairs pursuant to the applicable certification standards set by the Board of Juvenile Affairs, and each member of the staff of the municipal juvenile facility shall have satisfactorily completed a training program provided or approved by the Department of Juvenile Justice. In furtherance of this subsection, the Office of Juvenile Affairs is directed to and shall establish standards for the certification of municipal juvenile facilities, with said standards to include, but not be limited to, the conditions set forth in subparagraphs a through g, inclusive, of this paragraph, and the Department of Juvenile Justice is directed to and shall provide or approve an appropriate training program for staff members of such facilities. In lieu of operating a municipal juvenile facility with trained municipal employees, the municipality may contract with an independent public or private facility properly certified by the Office of Juvenile Affairs for performance of the detention services authorized by the provisions of this paragraph. For the purposes of this section, a "municipal juvenile facility" shall mean a secure facility which is entirely separate from any jail, adult lockup, or other adult facility, or is spatially separate if contained inside any jail, adult lockup, or other adult facility which is certified by the Office of Juvenile Affairs for use for the temporary detention of juveniles as authorized by the provisions of this paragraph. The provisions of this paragraph shall not restrict or limit the use of municipal juvenile facilities for detention of juveniles who are detained pursuant to other provisions of law. In no event shall a juvenile be held in an adult facility that does not meet the definition of a municipal juvenile facility.~~

Modified
& moved
to New
Law *Juris.*
of *Municip.*
2-102B
B-5

~~5. Pursuant to an interlocal cooperation agreement between a municipality and the district court, as authorized by the provisions of paragraph 1 of this subsection, a child less than eighteen (18) years of age may be charged, prosecuted and, if convicted, fined for violating a municipal ordinance for which provision is made in paragraph 1 of this subsection; provided, that the maximum fine which may be imposed shall not exceed the maximum fine authorized by law. When assessing punishment, the court also may require appropriate community service work, not to exceed ninety (90) hours, in lieu~~

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~~of or in addition to a fine if the product of multiplying the number of hours of community service work by the prevailing minimum wage plus any fine imposed does not result in a number which exceeds the maximum fine authorized by law, or restitution, or both community service work and restitution. If the child fails to complete the community service, a parent or guardian of the child who knew or should have known that the child failed to complete the community service may be fined an amount that is equal to the number of community service hours that are uncompleted by the child multiplied by the hourly minimum wage amount. In addition, during any calendar year that any child:~~

- ~~a. fails to appear for a court date on more than one occasion,~~
- ~~b. is convicted of two or more of the municipal offenses for which provision is made in paragraph 1 of this subsection, which offenses occurred on different days, or~~
- ~~c. fails to pay any fine or cost properly assessed by a municipal court,~~

~~and after the expiration of ninety (90) days, the court clerk shall mail notice of such occurrence to the Department of Public Safety, which department shall thereafter suspend or deny driving privileges for such child for six (6) months. The suspension may be modified as provided in Section 6-107.2 of Title 47 of the Oklahoma Statutes. In addition, the court may require the child to receive counseling or other community-based services, as necessary.~~

~~If a child is prosecuted for an offense in a municipal court, the child shall not be prosecuted for the offense in the district court. The municipal court may also impose costs as authorized by law.~~

~~6. Any fines and costs properly assessed against any child and which remain unpaid after three (3) months may be assessed by the municipal judge against the child's parent, parents, legal guardian or legal custodian and collected and paid as provided for in Articles XXVII and XXVIII of Title 11 of the Oklahoma Statutes. Provided however, prior to such latter assessment, the court clerk shall give such child's parent, parents, legal guardian or legal custodian notice by certified mail to their place of residence or personal service of such action proposed to be taken.~~

~~7. All municipal arrest records, prosecution records, court records, and court proceedings for cases involving children less than eighteen (18) years of age charged with violating municipal ordinances shall be kept confidential and shall not be open to public inspection except by order of the municipal court or as otherwise provided by Article VII of this Code and Section 620.6 of this title. Municipal conviction records involving children less than eighteen (18) years of age convicted of violating municipal ordinances shall be open to public inspection.~~

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~~F. Funds generated from fines paid pursuant to an interlocal cooperation agreement between a municipality and the district court pursuant to the provisions of subsection E of this section shall be earmarked and used by the municipality only for the following purposes:~~

- ~~1. To fund local programs which address problems of juvenile crime;~~
- ~~2. To fund the costs of prosecutions authorized pursuant to the provisions of subsection E of this section;~~
- ~~3. To fund the costs of detention authorized pursuant to the provisions of subsection E of this section;~~
- ~~4. To fund administrative costs related to local programs that address problems of juvenile crime or related to the prosecution, detention, or punishment authorized pursuant to the provisions of subsection E of this section; and~~
- ~~5. To fund the costs of community intervention centers authorized pursuant to Section 7302-3.5 of this title.~~

~~Such earmarked funds shall not be used by the municipality for any purpose other than the purposes set forth in paragraphs 1 through 5 of this subsection.~~

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

Modified
& moved
to New
Law *Juris.*
of Municip.
2-102B
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PROPOSED NEW LAW
SUBMIT AS IS, SUBJECT TO REVISIONS

§ 2-102B Title: Jurisdiction of Municipalities

- A. 1. A municipality with a population of at least twenty-five thousand (25,000) may, by written resolution filed with the district court assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating any municipal ordinance identified in the resolution.
2. Any other municipality may enter into an interlocal agreement with the district court pursuant to the Interlocal Cooperation Act, sections 1001 through 1008 of Title 74 of the Oklahoma Statutes to assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating any municipal ordinance as agreed to by the district court, the district attorney and the municipality.
3. The chief juvenile judge of the district court judicial district, if there is no chief judge then the presiding judge of the judicial administrative district is hereby authorized to enter into the interlocal agreement as provided for in this section for and on behalf of the judicial district if the judge determines that the agreement is constitutional and complies with state and federal law.
- B. 1. A child under eighteen (18) years of age who is taken into custody for the alleged violation of municipal ordinance relating to truancy may be held pursuant to Section 10-109 of Title 70 of the Oklahoma Statutes.
2. A child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to curfews may be held temporarily under the care of a peace officer or other person employed by a police department only until the child's parent, legal guardian, legal custodian, attorney or other responsible adult assumes custody or, if such a person cannot be located within a reasonable time of taking the child into custody or if such a person refuses to assume custody, until temporary shelter is found for the child.
- The temporary custody provided for by this paragraph shall be utilized as a means of returning the child to the child's home or other place of shelter.
3. In no event shall the child be placed in a jail, lockup, or adult detention facility. In no event shall the child be placed in a juvenile detention facility for more than twenty-four (24) hours, excluding

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from 7303-
1.2.E

weekends and holidays, prior to an initial court appearance and for an additional twenty-four (24) hours, excluding weekends and holidays, immediately following an initial court appearance; provided however, this provision shall not restrict or prohibit placing a child in a community intervention center pursuant to Section 7302-3.5 of this title.

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& moved
from 7303-
1.2.E

4. Notwithstanding any other provision of this Code, a child less than eighteen (18) years of age, who is taken into custody for the alleged violation of a municipal ordinance, and who can be prosecuted in municipal court for such offense pursuant to jurisdiction assumed by municipal court pursuant to the provisions of paragraph 1 of this subsection, may be temporarily detained by the municipality in a municipal juvenile facility, as defined by this section but only pursuant to the following conditions:

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from 7303-
1.2.E.4

a. the municipality shall immediately take all reasonable steps to attempt to locate the child's parent, legal guardian, legal custodian, attorney or other responsible adult and determine if said parent, legal guardian, legal custodian, attorney or other responsible adult is willing to appear at the municipal juvenile facility and assume personal custody of such child upon the child's release from such facility.

b. the child shall be released to the personal custody of the child's parent, legal guardian, legal custodian, attorney or other responsible adult as soon as practicable and upon the written promise of such person to return the child to municipal court to answer the municipal charges on the date and at the time set by the municipal court and to assume responsibility for costs for damages by the child if the child causes damages while committing any acts in violation of municipal ordinances. Municipalities may enact ordinances providing penalties for failure to comply with the written promise and for refusal to assume custody of a child in a timely manner.

c. the child shall be detained in the municipal juvenile facility for no longer that twenty-four (24) hours: provided, if the child's parent, legal guardian, legal custodian, attorney or other responsible adult fails to appear at the municipal juvenile facility and assume personal custody of the child within said twenty-four hour period, then custody or release of the child shall be determined pursuant to the provisions of Section 7303-1.1,

d. the child shall be provided with adequate fresh drinking water,

e. the child shall be provided with adequate food not less that three times in a twenty-four-hour period,

f. the child shall be provided with adequate bathroom facilities and bedding,

g. the child shall be provided with any necessary medical care and treatment.

5. A municipal juvenile facility shall mean a secure facility which is entirely separate from any jail, adult lock-up, or other adult facility or is spatially separate if contained in side any jail, adult lockup or other adult facility which is certified by the Office of Juvenile Affairs for the temporary detention of juvenile as authorized by the provision of this section.

a. a municipal juvenile facility shall be certified by the Office of the Juvenile Affairs pursuant to the applicable certification standards and the Office of Juvenile Affairs is directed to and shall establish standards for certification of municipal juvenile facilities to include but not limited to the conditions set forth in subparagraphs a through g of the section,

b. each member of the staff of the municipal facility shall have satisfactory completed a training program provided or approved by the Office of Juvenile Affairs and the Office of Juvenile Affairs is directed to and shall provide or approve an appropriate training program for staff members of such facilities,

c. a municipality may contract with an independent public or private facility properly certified by the Office of Juvenile Affairs for the performance of the detention services authorized by the provisions of this paragraph,

d. The provisions of this paragraph shall not restrict or limit the use of the municipal juvenile facilities for detention for juveniles who are detained pursuant to other provisions of law.

e. in no event shall a juvenile be held in an adult facility that does not meet the definition of a municipal juvenile facility.

6. a. A child less that eighteen (18) years of age may be charged, prosecuted and if convicted, fined for violating a municipal ordinance for which provision is made in paragraph 1 of this subsection, provided that the maximum fine which may be imposed shall not exceed the maximum fine authorized by law.

b. When assessing punishment, the court also may require appropriate community service work, not to exceed ninety (90) hours, in lieu of or in addition to a fine if the product of multiplying the number of hours of community service work by prevailing minimum wage plus any fine imposed

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1.2.E.4

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1.2.E.5

does not result in a number which exceeds the maximum fine authorized by law or restitution or both community service work and restitution. The court may also impose costs as authorized by law.

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1.2.E.5

c. If the child fails to complete the community service, a parent or guardian of the child who knew or should have known that the child failed to complete the community service may be fined and amount equal to the number of community service hours that are uncompleted by the child multiplied by the hourly wage amount.

d. In addition, during any calendar year that any child;

1. fails to appear for a court date on more than one occasion,

2. is convicted of two or more of the municipal offenses for which provision is made in paragraph 1 of this subsection, which offenses occurred on different days, or

3. fails to pay any fine or cost properly assessed by a municipal court,

and after expiration of ninety (90) days, the court clerk shall mail notice of such occurrence to the Department of Public Safety, which department shall thereafter suspend or deny driving privileges for such child for six (6) months. The suspension may be modified as provided on Section 6-107.2 of Title 47 of the Oklahoma Statutes. In addition, court may require the child to receive counseling or other community-based services, as necessary.

e. If a child is prosecuted for any offense in a municipal court, the child shall not be prosecuted for the offense in the district court.

f. Any fines and costs properly assessed against any child and which remain unpaid after three (3) months may be assessed by the municipal judge against the child's parent, parents, legal guardian or legal custodian and collected and paid a provide for in Articles XXVII and XXVIII of Title 11 of the Oklahoma Statutes. Provided however, prior to such latter assessment, the court clerk shall give such child's parent, parents, legal guardian or legal custodian notice by certified mail to their place of residence or personal service of such action proposed to be taken.

Modified
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from 7303-
1.2.E.6

g. All municipal arrest records, prosecution records, court records and court proceedings for cases involving children less than eighteen (18) years of age charged with violating municipal ordinance shall be kept confidential and shall be kept confidential and shall not be open to public inspection except by order of the municipal court or as otherwise provided by Article VII of this code and Section 620.6 of this title. Municipal convictions records involving

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1.2.E.7

children less than eighteen (18) years of age convicted of violating municipal ordinances shall be open to public inspection.

h. Funds generated from fines paid pursuant to an interlocal cooperation agreement between a municipality and district court shall be earmarked and used by the municipality only for the following purposes:

- 1. To fund local programs which address problems of juvenile crime.**
- 2. To fund the costs of prosecution authorized pursuant to the provisions of this section.**
- 3. To fund the costs of detention authorized pursuant to this section.**
- 4. To fund administrative costs related to local programs of juvenile crime or related to the prosecution, detention or punishment authorized pursuant to this subsection; and**
- 5. To fund the cost of community intervention centers authorized pursuant to Section 7302-3.5 of this title.**

Such earmarked funds shall not be used by the municipality for any purpose other than the purposes set forth in paragraphs 1 through 5 of this subsection.

Modified
& moved
from 7303-
1.2.F

PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING OF PETITION

§ 2-103

~~§ 7303-1.3. Preliminary inquiry—Petition~~

A. ~~The court may provide by rule who shall make a~~ A preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Oklahoma Juvenile Code require that further court action be taken. ~~Provided, that where intake is to be provided by the Department of Juvenile Justice under contract with the Supreme Court, or under the provision of rules issued by the Supreme Court, the preliminary inquiry shall follow the uniform contractual procedures as agreed to by the Supreme Court and the Department.~~ If it is determined by the preliminary inquiry that no further action be taken and if agreed to by the district attorney, the ~~person or the court~~ intake worker may make such informal adjustment ~~as is practicable~~ without a petition.

STRICKEN

B. ~~A petition in a juvenile proceeding may be filed by the district attorney to determine if further action is necessary. The proceeding shall be entitled "In the matter of _____, an alleged (delinquent) or (a child alleged to be in need of supervision)".~~

Moved to
7303-1.5.
NEW # D

~~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 the Oklahoma Juvenile Code;~~
- ~~2. The name, age and residence of the child;~~
- ~~3. The names and residences of the parents of the child;~~
- ~~4. The name and residence of the legal guardian of the child, if applicable;~~
- ~~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 federal law, state law or municipal 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.~~

Moved to
7303-1.5.
NEW # D

~~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 the facts are not known to the petitioner.~~

STRICKEN

~~C. A petition alleging a child to be a minor in need of treatment shall be filed by a district attorney pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.~~

STRICKEN

B. Informal adjustment may be provided to the child by the intake worker only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where consent is obtained from the district attorney, the child's parent, legal guardian or custodian, or legal counsel, if any, and the child. The informal adjustment is an agreement whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child. The informal adjustment shall be completed within a period of time not to exceed six (6) months and shall:

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definitive.

1. Be voluntarily entered into by all parties;
2. Be revocable by the child at any time by a written revocation;
3. Be revocable by the intake officer in the event there is reasonable cause to believe the child has failed to carry out the terms of the informal adjustment or has committed a subsequent offense;
4. Not to be used as evidence against the child at any adjudication hearing;
5. Be executed in writing and expressed in language understandable to the persons involved;
6. Become part of the child's juvenile record.

The informal adjustment agreement under this section may include, among other suitable methods, programs, and procedures, the following:

- a. participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion

of the intake officer would be beneficial to the child and his/her family.

b. require the child to undergo a behavioral health evaluation and, if warranted, undergo appropriate care or treatment.

c. Restitution providing for monetary payment by the parents and/or the child to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the intake officer shall consult with the victim concerning the amount of damages.

d. Informal adjustment projects, programs and services may be provided through public or private agencies.

If the intake worker has reasonable cause to believe that the child has failed to carry out the terms of the adjustment agreement or has committed a subsequent offense, in lieu of revoking the agreement, the intake worker may modify the terms of the agreement and extend the period of the agreement for an additional six (6) months from the date on which the modification was made with the consent of the child, or child's counsel, if any.

C. If an informal adjustment is agreed to pursuant to section B, the informal adjustment agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The child shall remit the fee directly to the agency responsible for the monitoring and supervision of the child. If the supervising agency is a juvenile bureau, then the fee shall be remitted to a revolving fund of the county in which the juvenile bureau is located to be designated the "Juvenile Deferral Fee Revolving Fund" and shall be used by the juvenile bureau to defray costs for the operation of the juvenile bureau. In those counties without juvenile bureaus and in which the Office of Juvenile Affairs or one of their contracting agencies provides the monitoring and supervision of the juvenile, the fee shall be paid directly to the Office of Juvenile Affairs and shall be used to defray the costs for the operation of the Office of Juvenile Affairs.

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

~~E. A district attorney may defer filing a petition alleging a child to be delinquent or in need of supervision for a period of up to six (6) months if the~~

NEW
Deferred
Prosecution
- expanded
to be more
definitive.

Moved to
7303-1.5
NEW # E

STRICKEN
- See above.

~~child participates in a teen court program, a graduated sanctions program, a first-time offender program, as defined in Section 7303-4.6 of this title, or such other program as may be approved by the juvenile court and the district attorney. If the child successfully completes the program, the district attorney shall not file the petition. If the district attorney defers filing a petition pursuant to this subsection, the deferral agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The juvenile shall remit the fee directly to the agency responsible for the monitoring and supervision of the juvenile. If the supervising agency is a juvenile bureau, then the fee shall be remitted to a revolving fund of the county in which the juvenile bureau is located to be designated the "Juvenile Deferral Fee Revolving Fund" and shall be used by the juvenile bureau to defray costs for the operation of the juvenile bureau. In those counties without juvenile bureaus and in which the Office of Juvenile Affairs or one of their contracting agencies provides the monitoring and supervision of the juvenile, the fee shall be paid directly to the Office of Juvenile Affairs and shall be used to defray the costs for the operation of the Office of Juvenile Affairs. The records of a case for which a petition is not filed shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.~~

STRICKEN
– See above.

Moved to
7307-1.2
NEW # M

SECTION 4. This act shall become effective November 1, 2007.

Approved May 31, 2007.

OK LEGIS 176 (2007)

PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING OF PETITION

§ 2-104

~~§ 7303-1.4. Petition to be filed within certain time--Order removing child from home prohibited absent certain determinations--"Responsible adult" defined~~

~~A. If a child has been taken into custody pursuant to the provisions of the Juvenile Justice Code 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 the child's parent, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Oklahoma Juvenile Code.~~

Moved to 7303-1.5 NEW # A

~~B.~~ No order of the court providing for the initial or continued removal of a child alleged or adjudicated delinquent or in need of supervision from the child's home shall be entered unless the court finds that the continuation of the child in the home of the child is contrary to the welfare of the child. The 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 the home or, as appropriate, reasonable efforts have been made to provide for the return of the child to the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of the child from the home is reasonable upon consideration of the family circumstances, the safety of the child and the protection of the public; or

3. A determination that reasonable efforts to prevent the removal of the child from the home or to reunify the child and family are not required because:

a. a court of competent jurisdiction has determined that the parent has subjected the child to one of the following aggravated circumstances: abandonment, torture, chronic abuse, sexual abuse or chronic, life-threatening neglect of the child,

b. a court of competent jurisdiction has determined that the parent has been convicted of one of the following:

(1) murder of another child of the parent,

(2) voluntary manslaughter of another child of the parent,

(3) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(4) a felony assault that results in serious bodily injury to the child or another child of the parent, or

c. the parental rights of the parent with respect to a sibling have been terminated involuntarily.

~~C. For purposes of this section and Sections 7303-1.1 and 7303-1.2 of this title, "responsible adult" means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in another person's absence who is eighteen (18) years of age or older.~~

Moved to 7301-1.3 NEW # 28

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

**PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING
OF PETITION**

§ 2-105

~~§ 7303-1.5. Petition Subsequent pleadings—Amended petitions~~

A. If a child has been taken into custody pursuant to the provisions of the Juvenile Code 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 the child's parent, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Oklahoma Juvenile Code.

Moved
from 7303-
1.4.A

~~A.~~ **B.** 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.~~ **C.** 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 shall not amend the adjudicatory category prayed for in the petition.

D. A petition in a juvenile proceeding may be filed by the district attorney to determine if further action is necessary. The proceeding shall be entitled "In the matter of _____, an alleged (delinquent) or (a child alleged to be in need of supervision)".

Moved
from 7303-
1.3.B

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 the Oklahoma Juvenile Code;

2. The name, age and residence of the child;

3. The names and residences of the parents of the child;

4. The name and residence of the legal guardian of the child, if applicable;

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;

Moved
from 7303-
1.3.B

7. The relief requested; and

8. The specific law 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.

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

Moved
from 7303-
1.3.D

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING OF PETITION

§ 2-106

~~§ 7303-1.6.~~ **Summons—Warrant – Failure to Appear**

A. After a petition shall have been filed, unless the parties provided for in this section 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. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate.

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. Service of summons shall be made as provided for service in civil actions.

Modified &
Moved from
7303-2.1.A

1. The court shall 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.

Moved from
7303-2.1.B.1

2. If the parent is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.

Moved from
7303-2.1.B.2

~~D.~~ **E.** If after a petition has been filed, it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the judge may immediately issue a detention order or warrant authorizing the taking of said child into emergency custody. Any such child shall not be considered to be in the custody of the Office of Juvenile Affairs.

~~E.~~ **F.** 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.

G. 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 the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian, or against the child.

Modified & Moved from 7303-2.2

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

**PART 1. CUSTODY AND PROCEEDINGS THROUGH FILING OF
PETITION**

§ 2-107

~~§ 7303-1.7. Examination by health care professionals--Order for treatment-- Investigation of child's home and custodian's earning capacity~~

A. After a petition under the provisions of this article has been filed, the court may order the child to be examined and evaluated **for medical issues, including behavioral health diagnoses** by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child. ~~The court may order a mental health evaluation of a child as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.~~

B. 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 county, 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.

~~C. After adjudication and at the request of a judge in any juvenile proceeding, the Department of Juvenile Justice 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 another state, the Department may conduct a similar investigation.~~

STRICKEN

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 2. SUMMONS

§ 2-201

~~§ 7303-2.1. Service of summons--Timing of hearing--When order determining delinquency becomes final~~

~~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. If 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.~~

Moved to
7303-1.6
NEW # D

~~B. 1. The court shall 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.~~

Moved to
7303-1.6
NEW # D.1

~~2. If the parent is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.~~

Moved to
7303-1.6
NEW # D.2

~~3. If notice is published, the court shall not hold the hearing until at least ten (10) days after the date of publication.~~

STRICKEN

~~4. 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.~~

STRICKEN

~~C. An order determining that a child is delinquent or in need of supervision 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.~~

STRICKEN

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-202

~~§ 7303-2.2. Failure to appear--Contempt--Warrants~~

~~If any person summoned shall, without reasonable cause, fail to appear, such person may be held in 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 the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian, or against the child.~~

STRICKEN

Modified and
Moved to
7303-1.6
NEW # G

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 3 2. CUSTODIAL INTERROGATION

§ 2-301

~~§ 7303-3.1.~~ Conduct of interrogations--Appointment of counsel--Guardians ad litem--Misuse of records by public officers and employees

A. No information gained by a custodial interrogation of a youthful offender under sixteen (16) years of age or of a child ~~or a youthful offender under sixteen (16) years of age~~ nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the child or youthful offender unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child or youthful offender. No such custodial interrogation shall commence until the child and the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child have been fully advised of the constitutional and legal rights of the child or youthful offender, 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; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, "custodial interrogation" means questioning of a ~~child or~~ youthful offender under sixteen (16) years of age or a child while that ~~child or~~ youthful offender or child is in law enforcement custody or while that ~~child or~~ youthful offender or child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the ~~Department~~ Office. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term "custodial interrogation" shall not be deemed to mean questioning of a child or youthful offender by a public school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the ~~Department~~ Office. Any information gained from noncustodial questioning of a child or youthful offender by a public school administrator or teacher concerning a wrongful act committed on public school property shall be admissible into evidence against the child or youthful offender.

NEW

B. A custodial interrogation of a youthful offender over sixteen (16) years of age shall conform with all the requirements for the interrogation of an adult.

NEW

~~B. If the parents, guardian, or other legal custodian of the child being interrogated 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 child in need of supervision, 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.~~ **C.** If the child is not otherwise represented by counsel and requests an attorney prior to or during interrogation, or whenever a petition is filed pursuant to the provisions of Section 7303-1.3 of this title, the court shall appoint an separate attorney, who shall not be a district attorney, for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the Court only upon determination by the Court that the parent, guardian or legal custodian is found to be indigent.

STRICKEN

Paragraph C with new last sentence copied to 7306-2.4.C.

~~C.~~ **D.** Whenever a petition is filed alleging that a child is a delinquent child or a child in need of supervision, 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 or the attorney of the child. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the child.

~~D.~~ The guardian ad litem 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 Section 846 of Title 21 of the Oklahoma Statutes.

~~E. It shall be unlawful and a misdemeanor for the Office of Juvenile Affairs, the Department of Juvenile Justice, any person employed by the Office or the Department, or any other public officer or employee, to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.~~

STRICKEN
- Language contained in 7307-1.3.B.

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 4. ADJUDICATIVE AND CERTIFICATION HEARINGS

§ 2-401

~~§ 7303-4.1.~~ Trial by jury

In adjudicatory hearings to determine if a child is delinquent or in need of supervision, any person entitled to service of summons or the state shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on the judge's own motion may call a jury to try any such case. Such jury shall consist of six persons.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-402

~~§ 7303-4.2.~~ Conduct of adjudicative hearings

A. 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.

~~1. Except as provided by paragraph 2 of this subsection, the~~ hearings shall be conducted in private. Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order the hearing to be conducted in public, unless specifically ordered by the judge to be conducted in public, and all persons having a direct interest in the case as provided in this paragraph shall be admitted. Any victim, relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness of a ~~juvenile-eriminal~~ delinquent act shall be considered to have a direct interest in the case and shall be notified of all court hearings involving that particular ~~juvenile-eriminal~~ delinquent act as provided by Section 215.33 of Title 19 of the Oklahoma Statutes and shall be admitted to the proceedings. 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 or as otherwise provided by law.

NEW

~~2. Hearings related to the second or subsequent delinquency adjudication of a child shall be public proceedings. The adjudications relied upon to determine whether a hearing is a public proceeding pursuant to this paragraph shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order specific testimony or evidence to be heard in private; provided, the court shall not exclude any relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness from the hearing during testimony of the victim. For the purposes of this paragraph, "good cause" shall mean a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing.~~

STRICKEN

B. The child may remain silent as a matter of right in delinquency hearings and in need of supervision hearings, and before ~~he is interrogated~~ the child testifies ~~he~~ the child shall be so advised.

C. A decision determining a child to come within the purview of the Oklahoma Juvenile Code shall be based on sworn testimony and the child shall have the opportunity for cross-examination unless the facts are stipulated. **In proceedings pursuant to the Oklahoma Juvenile Code, 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.** If a child is alleged to be delinquent and the facts are stipulated, the judge shall ascertain from the child if the child agrees with the stipulation and if the child understands the consequences of stipulating the facts.

Moved
from 7303-
7.3

D. If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, 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 and shall adjudge the child as a ward of the court.

Moved
from 7303-
4.6.A

E. If the court finds that the allegations of the petition are not supported by the evidence, the court shall order the petition dismissed and shall order 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.

Moved
from 7303-
4.5

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-403

~~§ 7303-4.3. Certification proceedings~~

~~A. Except as otherwise provided in the Oklahoma Juvenile Code, a child who is charged with having violated any state statute or municipal ordinance other than those enumerated in Section 7306-1.1, 7306-2.5 or 7306-2.6 of this title, shall not be tried in a criminal action but in a juvenile proceeding. The juvenile proceeding may be filed before the child becomes eighteen (18) years of age or within ninety (90) days after the date of the eighteenth birthday of the child. 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 or municipal 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 the 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 the 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 division of the district court or by municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.~~

~~A.B.~~ Except as otherwise provided by law, if a child is charged with **delinquency a delinquent act** as a result of an offense which would be a felony if committed by an adult, the court on its own motion or at the request of the district 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 if the child should be held accountable for acts of the child as if the child were an adult if the child 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;

Modified
& Moved
to 7303-1.2
NEW # D

Modified
& Moved
to 7303-1.2
NEW #
B.3

Modified
& Moved
to 7303-1.2
NEW # E

Modified
& Moved
to 7303-1.2
NEW # F

2. Whether the offense was against persons or property, greater weight being given to transferring the accused person to the adult criminal justice system for offenses against persons and, if personal injury resulted, the degree of personal injury;
3. The sophistication and maturity of the juvenile and capability of the juvenile of distinguishing right from wrong as determined by consideration of a psychological evaluation of the juvenile, home, environmental situation, emotional attitude and pattern of living;
4. The record and previous history of the accused person, including previous contacts with community agencies, law enforcement agencies, schools, juvenile or criminal courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;
5. The prospects for adequate protection of the public;
6. The likelihood of reasonable rehabilitation of the juvenile if the juvenile is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
7. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After the 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, based on clear and convincing evidence, that the child shall be held accountable for acts of the child as if the child 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 the 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 the 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. B. Prior to the entry of any order of **adjudication certification**, 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, the 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 certification**, the child becomes eighteen (18) years of age, the child may be detained in a county jail or released on bail. If a child is certified to stand trial as an adult, the court shall make every effort to avoid duplication of the adult preliminary hearing and the prosecutorial hearing in the juvenile certification process. The parties may jointly stipulate the court that the record for the prosecutorial merit hearing in the juvenile proceeding be used for all or part of the preliminary hearing.

~~**D. C. Any child who has been certified to stand trial as an adult pursuant to any order entered by any competent court of this state or any other state certification procedure provided by law, or who has been tried as an adult pursuant to any reverse 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 or be eligible to be tried as a youthful offender in any further proceedings.**~~

NEW

STRICKEN

~~**E. Any child seventeen (17) years of age or older who has been certified to stand trial as an adult pursuant to any certification procedure of any other state and subsequently convicted of the alleged offense, or who has been tried and convicted as an adult in any other state, 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 or be eligible to be tried as a youthful offender in any further proceedings.**~~

STRICKEN

F. D. An order either certifying a person as a child or an adult pursuant to subsection B A of this section or denying such certification shall be a final order, appealable when entered and shall not be modified.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

§ 2-404

~~§ 7303-4.5. Dismissal of petition~~

~~If the court finds that the allegations of the petition are not supported by the evidence, the court shall order the petition dismissed and shall order 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.~~

Moved to
7303-4.2
NEW # E

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-405

~~§ 7303-4.6. Order of adjudication--Deferral of delinquency or in need of supervision proceedings~~

~~A. If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, 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 and shall adjudge the child as a ward of the court.~~

Moved to
7303-4.2
NEW # D

~~B. A. A court may defer delinquency adjudication proceedings or proceedings to determine if a child is in need of supervision for one hundred eighty (180) days up to one (1) year if the child:~~

NEW

~~1. Is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a misdemeanor or that if committed by an adult would be grand larceny of property valued at One Hundred Dollars (\$100.00) or less;~~

STRICKEN

~~2. 1. Waives the privilege against self-incrimination and testifies, under oath, that the allegations are true; and~~

~~3. 2. Has not been previously adjudicated a delinquent.~~

~~4. Presents to the court an oral or written request to attend a Teen Court program or graduated sanctions program.~~

STRICKEN

~~C. A court may defer delinquency adjudication proceedings for the duration of the juvenile drug court program if the child is participating in such a program.~~

STRICKEN

~~D. B. The Teen Court program, graduated sanctions program, or juvenile drug court must be approved by the court. During such period of deferral, the Court may require the following:~~

REWRITTEN
TO EXPAND.

- ~~1. participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which would be beneficial to the child and his/her family;~~
- ~~2. require the child to undergo a behavioral health evaluation and, if warranted by the mental condition of the child, undergo appropriate care or treatment;~~
- ~~3. Restitution providing for monetary payment by the parents and/or the child to the victim who was physically injured or~~

who suffered loss of or damage to property as a result of the conduct alleged;

NEW

4. an alternative diversion program;
5. Any other programs and services that may be provided through public or private agencies and as approved by the court.

~~E. C.~~ The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence ~~that the Teen Court program, graduated sanctions program or a juvenile drug court has~~ that the court's requirements have been successfully completed.

REWRITTEN
TO EXPAND.

~~F.~~ The court may require a child who requests a Teen Court program to pay a fee, as determined by the court, not to exceed Twenty Dollars (\$20.00) to cover the costs of administration. The fee shall be deposited in the court clerk's official depository account. Eighty percent (80%) of the costs so paid shall be distributed to the organization sponsoring the Teen Court to be used for Teen Court operating expenses. The remaining twenty percent (20%) of the cost shall be paid by the court clerk to the court fund.

STRICKEN
-
REWRITTEN
TO EXPAND.

~~G.~~ A court may defer delinquency proceedings or proceedings to determine if a child is in need of supervision for one hundred eighty (180) days for any child that has not been previously adjudicated delinquent, if the child and, if required by the court, the parent or legal guardian of the child agree to participate in an alternative diversion program for first-time offenders that has been approved by the court. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the alternative diversion program for first-time offenders has been successfully completed. The records of a case dismissed pursuant to this subsection shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

~~H.~~ A court may defer delinquency proceedings for one hundred eighty (180) days for any child that has not been previously adjudicated delinquent, if the child agrees to participate in a counseling program that has been approved by the court. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the counseling program has been successfully completed. The records of a case dismissed pursuant to this subsection shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

I. D. As used in this section:

~~1.~~ "Alternative diversion programs for first-time offenders" means programs for juveniles who have been identified by law enforcement personnel, the district attorney, or the court as having committed acts which are not serious enough to warrant adjudication through the juvenile court process, but which do indicate a need for intervention to prevent further development toward

juvenile delinquency. The program shall be administered, pursuant to contract with the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, by organizations designated as youth services agencies by law;

~~2. "Graduated sanctions program" means a program administered by the Office of Juvenile Affairs as defined in Section 7301-1.3 of this title or as otherwise approved by the court;~~

~~3. "Juvenile drug court", "juvenile drug court program" or "program" means a highly structured judicial intervention process for substance abuse treatment of eligible juveniles as set forth in Section 7303-5.5 of this title;~~

~~4. "Supervising staff" means a community provider assigned to monitor juveniles in the program, a state or local agency representative or a certified treatment provider participating in the program, or a person designated by the judge to perform drug court investigations; and~~

~~5. "Teen Court program" means a program which provides an alternative judicial forum for cases involving juvenile offenders, in which teenage participants, under the supervision of an adult coordinator, may serve in various capacities within the courtroom, including jurors, lawyers, bailiffs and judges. Such program also may include participation by volunteer adult attorneys. The Teen Court hears cases involving juvenile offenders who are referred to the Teen Court by the district attorney or the district court and assesses sentences such as participation in community work projects, counseling or rehabilitation programs.~~

STRICKEN

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

PART 5. DISPOSITIONAL HEARINGS AND ORDERS

§ 2-501

~~§ 7303-5.1.~~ Dispositional hearings

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 but not limited to 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 district 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 Section 7303-7.6 of this title, unless custody is placed with the parent or parents of the child.

C. On its own motion or that of the district 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 release of the child 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.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-502

~~§ 7303-5.2. Individual treatment and service plans~~

A. An individual treatment and service plan shall be filed with the court within the thirty (30) days after any child has been adjudicated to be delinquent or in need of supervision. Said plan shall be filed by the person, department or agency responsible for the supervision of the case or by the legal custodian if the child has been removed from the custody of its lawful parent or parents. The treatment and service plan shall be based on a comprehensive assessment and evaluation of the child and family and include but not be limited to:

1. A history of the child and family, including identification of the problems leading to the adjudication;
2. Identification of the specific services available to the child to remediate or alleviate the conditions that led to the adjudication, including but not limited to educational, vocational-educational, medical, drug or alcohol abuse treatment or counseling or other treatment services;
3. Identification of the services to be provided to the parent, legal guardian, legal custodian, stepparent, other adult person living in the home or other family members, to remediate or alleviate the conditions that led to the adjudication, including services needed to assist the family to provide proper care and supervision of the child;
4. Performance criteria that will measure the progress of the child and family toward completion of the treatment and service plan;
5. A projected date for the completion of the treatment and service plan; and
6. The name and business address of the attorney representing the child, if any.

B. The individual treatment and service plan shall be amended as necessary and appropriate to reflect the disposition of the court. The amended plan shall be filed with the court within thirty (30) days of the order of disposition removing the child from the home and shall state:

~~1. The reasons for such placement and 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 home of the child;~~

STRICKEN

1. ~~2.~~ The services to be provided to the child while in such placement and the projected date of discharge;

2. ~~3.~~ The services necessary to assist the child to reintegrate with the family of the child or other community-based placement; and

3. 4. If the child is age sixteen (16) or older, the services necessary to make the transition from community placement to independent living.

C. Whenever a child who is subject to the provisions of this section is committed for inpatient mental health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the individual treatment and service plan shall be amended as necessary and appropriate, including but not limited to identification of the treatment and services to be provided to the child and his family upon discharge of the child from inpatient mental health or substance abuse treatment.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-503

~~§ 7303-5.3.~~ **Disposition orders--Revocation, modification and redispotion**

A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation ~~or under~~ **with or without** supervision in the home of the child, or in the custody of a suitable person, 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 the child is placed on probation, the court may impose a probation ~~supervision~~ fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. In counties having a juvenile bureau, the fee shall be paid to the juvenile bureau; in all other counties, the fee shall be paid to the Office of Juvenile Affairs.

NEW

STRICKEN

2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, 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 the child becoming delinquent or in need of supervision, 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 continuing to be delinquent or in need of supervision. ~~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.~~

STRICKEN

a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be 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 to be provided by the local school district, the county, the **Department Office** 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, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the child may require special education services in accordance with the Individuals with Disabilities Education Act (IDEA). 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 the ability of such person 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 to independent living.

No child who has been adjudicated in need of supervision only upon the basis of truancy or noncompliance with the mandatory school attendance law shall 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.

3. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, 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 any 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.

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

5. The court may commit the child to the custody of the Office of Juvenile Affairs ~~under the supervision of the Department of Juvenile Justice~~. Any order adjudicating the child to be delinquent and committing the child to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall be for an indeterminate period of time.

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, 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~~ Office or other person or agency receiving custody of the child.

7. With respect to a child adjudicated a delinquent child, the court may:

- a. for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, order the child to pay a victim compensation

assessment in an amount not to exceed that amount specified in Section 142.18 of Title 21 of the Oklahoma Statutes. The court shall forward a copy of the adjudication order to the Crime Victims Compensation Board for purposes of Section 142.11 of Title 21 of the Oklahoma Statutes. Except as otherwise provided by law, such adjudication order shall be kept confidential by the Board,

b. order the child to engage in a term of community service without compensation. The state 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,

~~e. if it is consistent with the welfare of the child, require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by Sections 227 and 228 of Title 57 of the Oklahoma Statutes shall apply to community services directed pursuant to this section. The court may order the parents or custodial parent of any child living with the parents or custodial parent to supervise the performance of community service by the child. The court may order the parents or custodial parent of any child living with the parents or custodial parent at the time of the criminal or delinquent act of the child to remit the amount of restitution ordered by the court. The court may consider any hardship of such order on the parents or custodial parent of the child. The parents or custodial parent may be represented by an attorney in the matter of the order for remittance of the restitution by the parents or custodial parent. Provided however, if the court orders the parents or custodial parent to remit the amount of restitution as provided for in this paragraph, in addition to any other dispositional orders of the court, the court shall order the child to perform community service for the number of hours commensurate with the number of hours it would require under federal or state minimum wage to earn the amount paid by such child's parents or custodial parent under the order to remit restitution;~~

STRICKEN
and
rewritten
below.

c. order the child, or the parent(s), or legal guardian at the time of the delinquent act of the child, or both the child and the parent(s) or legal guardian, to make full or partial restitution to the victim of the offense which resulted in property damage or personal injury.

NEW

1. The court shall notify the victim of the dispositional hearing. The court may consider a verified statement from the victim concerning damages for injury or loss of

property and actual expenses of medical treatment for personal injury, excluding pain and suffering. If contested, a restitution hearing to determine the liability of the juvenile and/or parent(s) or legal guardian shall be held not later than thirty days after the disposition hearing and may be extended by the court for good cause. The parent(s) or legal guardian may be represented by an attorney in the matter of the order for remittance of the restitution by the parent(s) or legal guardian. The burden of proving the amount indicated on the verified statement is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

2. Restitution may consist of monetary reimbursement for the damage or injury, after the court's consideration of the nature of the offense, the age, physical and mental condition of the juvenile, the earning capacity of the juvenile and/or the parent(s), or legal guardian's ability to pay, as the case may be, in the form of a lump sum or installment payments. Said payments shall be made to such official designated by the court for distribution to the victim. The court may also consider any other hardship on the child or parent(s) or legal guardian and, if consistent with the welfare of the child, require community service in lieu of restitution or both community service and full or partial restitution for the child's acts of delinquency.
3. A juvenile who is required to pay restitution and who is not in willful default of the payment of restitution may at any time request the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her parent, parents or legal guardians, the court may modify the method of payment.
4. If the restitution is not being paid as ordered, the official designated by the court to collect and disburse the restitution ordered shall file a written report of the violation with the court. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the official. A copy of the report shall be provided to all parties and the court shall promptly take any action necessary to compel compliance.

Upon the juvenile attaining 18 years of age, the court shall determine whether the restitution order has been satisfied, and if not, shall enter a judgment of restitution in favor of each person entitled to restitution for the unpaid balance of any restitution ordered pursuant to this section. The clerk of the court shall send a copy of the judgment of restitution to each person who is entitled to restitution. The judgment shall be a lien against all property of the individual(s) ordered to pay restitution and may be enforced by the victim or any other person or entity named in the judgment to receive restitution in the same manner as enforcing monetary judgments. The restitution judgment does not expire until paid in full and is deemed to be a criminal penalty for the purposes of a federal bankruptcy involving the juvenile.

NEW

d. order the child to pay the fine which would have been imposed had such child been convicted of such crime as an adult. Any such fine collected pursuant to this paragraph shall be deposited in a special Work Restitution Fund to be established by the court to allow children otherwise unable to pay restitution to work in community service projects in the private or public sector to earn money to compensate their victims,

e. order the cancellation or denial of driving privileges as provided by Sections 6-107.1 and 6-107.2 of Title 47 of the Oklahoma Statutes,

~~f. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, make the following orders: f. sanction detention in the residence of the child or facility designated by the Department of Juvenile Justice or the juvenile bureau for such purpose for up to five (5) days; weekend detention in a place other than a juvenile detention facility or shelter; tracking; or house arrest with electronic monitoring. On and after the adoption of guidelines by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, the provisions of subparagraphs a through e of this paragraph shall be subject to said guidelines,~~

STRICKEN

~~g. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, g. impose sanctions for the violation of preadjudicatory or postadjudicatory violations of probation.~~

STRICKEN

8. The Court may order the juvenile to participate in the Juvenile Drug Court Program.

NEW

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

10. 9. In any dispositional order removing a child from the home of the child, the court shall, in addition to the findings required by subsection B of Section 7303-1.4 of this title, make a determination that, in accordance with the best interests of the child and the protection of the public, 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 required as provided in subsection B of Section 7303-1.4 of this title, and reasonable efforts are being made to finalize an alternate permanent placement for the child.

B. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school district may disclose educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA). If the parent, guardian, or custodian of a child adjudicated a delinquent child asserts that the child has approval not to attend school pursuant to Section 10-105 of Title 70 of the Oklahoma Statutes, the court or the Office of Juvenile Affairs may require the parent to provide a copy of the written, joint agreement to that effect between the school administrator of the school district where the child attends school and the parent, guardian, or custodian of the child.

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication either the juvenile bureau in counties which have a juvenile bureau or the Office of Juvenile Affairs in all other counties shall notify the superintendent of the school district in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

D. No child who has been adjudicated in need of supervision may be placed in a **secure facility** ~~state training school~~.

E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for the violation unless the charge for which the arrest was made would constitute a felony if the child were an adult. Nothing contained in this subsection shall prohibit 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 the acts and nothing contained in this section shall prohibit detaining a juvenile pursuant to Section 7303- 1.2 of this title.

F. The court may revoke or modify a disposition order and may order redispotion. The child whose disposition is being considered for revocation or modification at said hearing shall have the right to be represented by counsel, to present evidence in the child's behalf and to be confronted by witnesses against the child. Any revocation, modification or redispotion of the court in whole or in part shall be subject to review on appeal, as in other appeals of criminal cases. Bail may be allowed pending appeal.

G. Any arrest or detention under the Oklahoma Juvenile Code or any adjudication in a juvenile proceeding shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.

Moved
from 7303-
1.2.A.4

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

§ 2-504

~~§ 7303~~ 5.4. Periodic review of disposition orders

A. 1. Every disposition order regarding a child adjudicated to be delinquent or in need of supervision shall be reviewed by the court at least once every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of the parent or parents are terminated pursuant to the Oklahoma Children's Code.

2. 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 the child's parents. No later than twelve (12) months after placing a child in out-of-home care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a permanency hearing to determine whether or not reasonable efforts have been made to finalize one of the following permanent placement plans:

- a. the child should be returned to the parents of the child or other family member,
- b. the child should be continued in out-of-home care for a specified period,
- c. the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship pursuant to the Oklahoma Children's Code, or
- d. the child, because of exceptional circumstances, should remain in out-of-home care on a long-term basis as a permanent plan or with a goal of independent living.

3. The provisions of this section also shall 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.

4. If authorized by the court, review hearings held pursuant to this section may be conducted via teleconference communication; provided, the attorney representing the child shall be present at the hearing. For purposes of this paragraph, teleconference communication means participation by the child and facility staff in the hearing by interactive telecommunication among the necessary participants, the court, and the child. The permanency hearing provided for in this section shall not be conducted via teleconference communication.

NEW

B. 1. The agency having supervision of the case or, if the child has been removed from the custody of its parents, the legal custodian of such child 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. The 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, if the child has been placed outside the home of the child, the visitation exercised by the parents of such child or other persons authorized by the court, and services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other community placement to independent living.

3. If the Office of Juvenile Affairs 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. 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.

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 or to correct the conditions that led to the adjudication.

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

1. As to whether 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 out-of-home 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. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall notify the court having jurisdiction, the appropriate review board and the appropriate district attorney whenever the placement of a child in the custody of the ~~Department Office~~ is changed and shall inform said court and attorney regarding the location of the child unless placement modification results from an emergency situation, in which case the notification required by this subsection shall be within one (1) business day after the change of placement. As used in this subsection, "emergency situation" means a placement change requested by a person having actual custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or a placement for emergency medical treatment.

F. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall provide the foster parent of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in six-month review hearings and twelve-month permanency hearings held with respect to the child during the time the child is in foster care of such foster parent, preadoptive parent or relative caregiver. Notice of hearings and an opportunity to be heard does not include the right to standing as a party to the case.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-505

~~§ 7303-5.5. Juvenile drug court program~~

A. The court is hereby authorized to establish a juvenile drug court ~~similar to the authority of the Oklahoma Drug Court Act~~ for the purpose of treating ~~alleged or~~ adjudicated juveniles who have a substance abuse disorder. The Department of Mental Health and Substance Abuse Services shall assist in the establishment of juvenile drug courts.

B. At the disposition hearing to ~~defer delinquency adjudication~~ set disposition of a case, proceedings for consideration of a juvenile for a juvenile drug court program the ~~district judge court shall~~ may determine whether: there are any statutory preclusions, other prohibitions, or program limitations that exist and are applicable to considering the juvenile for participation in the drug court program.

~~1. Any statutory preclusion, other prohibition, or program limitation exists and is applicable to considering the juvenile for the program;~~

MOVED –
see above.

~~2. The person responsible for the health or welfare of the juvenile, as defined by Section 7301-1.3 of this title, will actively support the participation of the juvenile in the program; and~~

Modified
& Moved
to 7303-5.6
B.3.g.

~~3. The juvenile and the person responsible for the health or welfare of the juvenile consent to treatment as part of the juvenile's participation in a juvenile drug court program, including residential treatment, if residential treatment is deemed necessary and appropriate by the drug court team.~~

~~C. The district attorney may object to the consideration of a juvenile for the juvenile drug court program at the initial hearing. A juvenile drug court investigation shall be ordered by the court, upon the motion of the district attorney, the juvenile, or the judge, once the requirements of subsection B of this section have been met.~~

STRICKEN

Modified &
Moved from
D.

~~D. If the juvenile and the person responsible for the health or welfare of the juvenile voluntarily consent to be considered for the juvenile drug court program and have signed and filed the required form requesting consideration, the court may shall refer the juvenile for a juvenile drug court investigation as provided in Section 3 of this act and set a date for a hearing to determine final eligibility for admittance into the program.~~

~~E. As a condition of participation in the juvenile drug court program, the juvenile shall stipulate to the facts of the case and the plea agreement shall specify the provisions and conditions of traditional processing should the juvenile be revoked from the drug court program.~~

STRICKEN

F. D. Upon denial for consideration in the juvenile drug court program at the initial hearing, the case shall proceed as authorized by the Juvenile Code.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-506

~~§ 7303-5.6. Juvenile drug court investigation--Report--Eligibility~~

A. When directed by the ~~juvenile drug~~ court judge, the treatment staff for the juvenile drug court program shall make an investigation of the juvenile under consideration to determine whether the juvenile is a person who:

1. Would benefit from the juvenile drug court program; and

2. ~~Is otherwise appropriate for the juvenile drug court program.~~
when the underlying crime or cause of the underlying crime involves alcohol or substance abuse.

NEW

B. 1. The juvenile drug court investigation shall be conducted through a standardized screening test, personal interview, and home study. A more comprehensive assessment may take place at the time the juvenile enters the treatment portion of the program and may take place at any time after placement in the juvenile drug court program.

2. The investigation shall determine the original treatment plan which the ~~offender~~ juvenile will be required to follow if admitted to the program. Any subsequent assessments or evaluations by the treatment provider, if the juvenile is admitted to the program, may be used to determine modifications needed to the original treatment plan.

3. The investigation shall include, but not be limited to, the following information:

a. the age and physical condition of the juvenile,

b. employment,

c. educational background and literacy level,

d. community and family relations,

e. prior and current drug and alcohol use,

f. ~~mental behavioral~~ health and medical treatment history, ~~including substance abuse treatment history,~~

CHANGES
by
DMHSAS.

g. demonstrable motivation of the juvenile and his or her family,

MOVED to
7303-5.5.B.2

h. the willingness of the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, to actively support the participation of the juvenile in the program, and

i. other mitigating or aggravating factors.

4. A written treatment plan, which is subject to modification at any time during the program, shall include but is not limited to:

- a. laying out the strong linkage between participating agencies;**
- b. access by all participating parties of a case to information on the juvenile's progress;**
- c. vigilant supervision and monitoring procedures;**
- d. random substance abuse testing;**
- e. provisions for noncompliance, modification of the treatment plan, and revocation proceedings;**
- f. availability of residential treatment facilities and outpatient services;**
- g. reparation to the victim, community, and state; and**
- h. methods for measuring application of disciplinary sanctions, including provisions for:**
 - i. increased supervision,**
 - ii. urinalysis testing,**
 - iii. intensive treatment,**
 - iv. short-term confinement not to exceed five (5) days,**
 - v. reinstating the juvenile into the program after a disciplinary action for a violation of the treatment plan, and**
 - vi. revocation from the program.**

NEW

~~C. 1. The juvenile drug court investigation shall be conducted after the initial hearing and before the hearing for final determination of eligibility for the juvenile drug court program.~~

STRICKEN

~~2.~~ **1.** When a juvenile is determined to be appropriate for admittance to the program, **regardless of whether the juvenile is in the custody of the Office of Juvenile Affairs,** the treatment staff shall make a recommendation for the treatment program or programs that are available in the jurisdiction and which would benefit the juvenile and accept the juvenile.

NEW

~~3. 2.~~ Prior to the next scheduled hearing, the investigation findings and recommendations for program placement shall be reported to the ~~juvenile drug court judge~~, the district attorney, the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, and the ~~defense juvenile's~~ attorney.

~~D. 1. The district attorney and the defense attorney for the juvenile shall independently review the findings and recommendations of the juvenile drug court investigation report.~~

STRICKEN

~~2. For a juvenile to remain eligible for consideration in the program, both the district attorney and the defense attorney must accept the recommended treatment plan and shall negotiate the terms of the written plea agreement with all rehabilitation provisions specified before the scheduled hearing date for determining final eligibility.~~

~~3. Upon failure of the district attorney and defense attorney to negotiate the plea agreement, the case shall be withdrawn from the juvenile drug court program and processed in the traditional manner.~~

~~4. The rehabilitation provisions of the plea agreement shall emphasize reparation to the victim, community, and state.~~

~~E. D.~~ The hearing to determine final eligibility shall be set not less than three (3) ~~workdays~~ judicial days nor more than seven (7) ~~workdays~~ judicial days from the date of the initial hearing for consideration, unless extended by the court.

NEW

E. 1. Any statement made by the juvenile to any supervising staff during the course of any drug court investigation and/or subsequent to the admission of the juvenile to the juvenile drug court program, as well as any report of findings and recommendations shall not be admissible in any case pending against the juvenile, nor shall such be grounds for the revocation of a juvenile from the program.

NEW

2. The restrictions provided in this section shall not preclude the admissibility of statements or evidence obtained by the state from independent sources.

NEW

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

REPEAL

STRICKEN

~~§ 7303-5.7. Admissibility and use of juvenile drug court information and report--
Photographic record of property~~

~~A. 1. Any statement, or any information procured therefrom, made by the juvenile to any supervising staff, which is made during the course of any drug court investigation conducted by the supervising staff pursuant to Section 3 of this act, and any report of the findings and recommendations of the supervising staff to the court, the district attorney, or the defense counsel shall not be admissible in the criminal case pending against the juvenile.~~

~~2. Any statement, or any information procured therefrom, with respect to the specific offense for which the juvenile was arrested or is charged, which is made to any supervising staff subsequent to the granting of admission of the juvenile to the drug court program, shall not be admissible in the pending criminal case nor shall such be grounds for the revocation of a juvenile from the program.~~

~~3. In the event that a juvenile is denied admission to the drug court program or is subsequently revoked from the program, any information gained from the drug court investigation, any statements or information divulged during the drug court investigation or any treatment session shall not be used in the sentencing of the juvenile for the original adjudication.~~

~~4. The restrictions provided in this section shall not preclude the admissibility of statements or evidence obtained by the state from independent sources.~~

~~B. 1. The juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, as consideration for entering the drug court program, must consent to a full and complete photographic record of property which was to be used as evidence in the pending criminal case. The photographic record shall be competent evidence of such property and admissible in any criminal action or proceeding as the best evidence.~~

~~2. After the photographic record is made, the property shall be returned as follows:~~

~~a. property, except that which is prohibited by law, shall be returned to its owner after proper verification of title,~~

~~b. the return to the owner shall be without prejudice to the state or to any person who may have a claim against the property, and~~

~~e. when a return is made to the owner, the owner shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the person in charge of the property at the police department or sheriff's office.~~

~~Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.~~

~~END OF DOCUMENT~~

§ 2-507

~~§ 7303-5.8. Juvenile drug court program--Final eligibility hearing-- Admittance into program~~

A. The juvenile drug court judge shall conduct a hearing to determine final eligibility of the juvenile for the juvenile drug court program by considering:

1. Whether the juvenile ~~and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, have voluntarily consented to the program requirements~~ is appropriate for placement in drug court, as provided in 7303-5.6.A. 1 & 2;

2. The findings and recommendations of the juvenile drug court investigation;

~~3. Whether there is a plea agreement, and if so, whether the terms and conditions of the plea agreement among the district attorney, the defense attorney, the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, are appropriate and consistent with the provisions and conditions of other similar cases;~~

STRICKEN

~~4.~~ 3. Whether there is an appropriate treatment program available to the juvenile and whether there is a recommended treatment plan; and

~~5.~~ 4. Any information relevant to determining eligibility. A juvenile shall not be denied admittance to any juvenile drug court program based upon the inability of the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, to pay court costs or other costs or fees.

~~B. At the hearing to determine final eligibility of the juvenile for the juvenile drug court program, the judge shall not grant a juvenile admission to the program if:~~

STRICKEN

~~1. The required treatment plan and adjudication agreement have not been completed;~~

~~2. The program funding or availability of treatment has been exhausted;~~

~~3. The treatment program is unwilling to accept the juvenile;~~

~~4. The juvenile was ineligible for consideration because of the nature of the offense at the time of arrest pursuant to subsection A of Section 471.2 of Title 22 of the Oklahoma Statutes and the charge was modified to meet the eligibility criteria of the program; or~~

~~5. The juvenile is inappropriate for admission to the program, in the discretion of the judge.~~

STRICKEN

~~C. B. The judge shall require the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, to demonstrate support for the participation of the juvenile in the program. In order for the juvenile to be admitted to the program, every person responsible for the health or welfare of the juvenile shall accept the personal jurisdiction of the court. Any adult who establishes a permanent residence in the home where the juvenile resides after the juvenile has been admitted to the program shall also accept the personal jurisdiction of the court. Failure of an adult responsible for the health or welfare of the juvenile, or an adult who resides in the home with the juvenile to accept personal jurisdiction of the court shall result in either the juvenile's dismissal from the drug court program, contempt of court proceedings for the adult, removal of the juvenile from the home, or any combination thereof. A juvenile shall not be removed from the drug court program based solely on the actions of such adult's failure to comply with this provision.~~

NEW

~~D. 1. At the final eligibility hearing, if evidence is presented that was not discovered by the juvenile drug court investigation, the district attorney or the defense attorney may make an objection and may ask the court to withdraw the plea agreement previously negotiated or the court may continue the issue to a subsequent hearing.~~

STRICKEN

~~2. The court shall determine whether to proceed and overrule the objection, to sustain the objection and transfer the case for traditional processing, or to require further negotiations of the plea agreement. The decision of the judge for or against eligibility and admission shall be final.~~

STRICKEN

~~E. C. When the court accepts the treatment plan and plea agreement, the juvenile, upon entering the plea as agreed by the parties, shall be ordered immediately into the program. The juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, must have voluntarily signed the necessary court documents before the juvenile may be admitted to treatment. The court documents shall include:~~

STRICKEN

~~1. Waiver of the right of the juvenile to a speedy trial;~~

STRICKEN

~~2. A plea agreement which sets forth the offense charged;~~

~~3. 1. A written treatment plan, which is subject to modification at any time during the program, as set forth in § 2-506 – B.4;~~

~~4. 2.~~ A statement requiring the juvenile to enter the treatment program as directed by the court and to participate until completion, withdrawal, or removal by the court; and

~~5. 3.~~ A statement signed voluntarily by the person or persons responsible for the health or welfare of the juvenile that such person will comply with the orders of the court and any conditions of the treatment program and supervising staff for as long as the juvenile participates in the juvenile drug court program.

~~F. The court shall dismiss the case with prejudice at the conclusion of the deferral period . if the juvenile presents satisfactory evidence that the juvenile drug court program has been successfully completed.~~

STRICKEN

~~G. D.~~ If admission into the juvenile drug court program is denied, the case shall be returned to the traditional juvenile docket and shall proceed as provided for any other juvenile case.

~~H. E.~~ At the time a juvenile is admitted to the juvenile drug court program, any bond, bail or undertaking on behalf of the juvenile shall be exonerated.

~~I. F. 1. The period of time during which a A juvenile ~~may~~ shall actively participate in ~~the active~~ treatment ~~portion of the juvenile drug court program~~ shall be for a period of not less than six (6) months while participating in the juvenile drug court program. ~~nor more than twenty-four (24) months and may include a period of supervision not less than six (6) months nor more than one (1) year following the treatment portion of the program.~~ Any person admitted to a juvenile drug court program who becomes eighteen (18) years of age shall be eligible to complete the drug court program.~~

NEW

2. All participating treatment providers shall be certified by the Department of Mental Health and Substance Abuse Services and shall be selected and evaluated for performance-based effectiveness annually by the Department of Mental Health and Substance Abuse Services. Treatment programs shall be designed to be completed within twelve (12) months and shall have relapse prevention and evaluation components.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

§ 2-508

~~§ 7303-5.9. Juvenile drug court program--Periodic review, progress reports and hearings~~

A. The juvenile drug court judge shall make all judicial decisions concerning any case assigned to the juvenile drug court docket or program. The judge shall require progress reports and a periodic review of each juvenile during their period of participation in the drug court program or for purposes of collecting costs and fees after completion of the treatment portion of the program. Reports from the treatment providers and the supervising staff shall be presented to the drug court judge as specified by the treatment plan or as ordered by the court.

~~B. Upon the written or oral motion of the treatment provider, the district attorney, the defense attorney, the juvenile, the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, or the supervising staff, the juvenile drug court judge shall set a date for a hearing to review the progress of the juvenile and the treatment plan. Notice shall be given to the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, and the other parties participating in the drug court case three (3) days before the hearing may be held.~~

STRICKEN

~~C. B.~~ The judge may establish a regular schedule for progress hearings for any juvenile in the drug court program. The district attorney, the juvenile, the juvenile's attorney, the person responsible for the health and welfare of the juvenile, and the treatment provider shall ~~not~~ be required to attend regular progress hearings, ~~but~~ and shall be required to be present upon the motion of any party to a drug court case.

NEW

~~D. C.~~ The treatment provider, the supervising staff, the district attorney, and the defense attorney shall be allowed access to all information in the drug court case file of the juvenile and all information presented to the judge at any periodic review or progress hearing.

~~E. D.~~ 1. The drug court judge shall recognize relapses and restarts in the program which are considered to be part of the rehabilitation and recovery process.

2. The juvenile drug court judge shall ~~accomplish monitoring and juvenile accountability by ordering~~ progressively increasing sanctions or ~~providing~~ incentives, rather than removing the juvenile from the program when relapse occurs, except when the conduct of the juvenile requires ~~revocation removal~~ removal from the program.

3. Any ~~revocation removal~~ removal from the drug court program shall require notice to the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, and other participating parties in the case and a ~~revocation~~ hearing.

4. At the ~~revocation~~ hearing, if the juvenile is found to have violated the conditions of the ~~plea agreement~~ treatment plan and disciplinary sanctions have been insufficient to gain compliance, the juvenile shall be ~~revoked~~ removed from the program ~~and be sent to adjudication for the offense as provided in the plea agreement~~ and returned to the regular juvenile court docket and set for redispotion.

~~F.~~ E. Upon application of any participating party to a drug court case, the judge may modify a treatment plan at any hearing when it is determined that the treatment is not beneficial to the juvenile. The primary objective of the judge in monitoring the progress of the juvenile and the treatment plan shall be to keep the juvenile in treatment for a sufficient time to change behaviors and attitudes. Modification of the treatment plan requires a consultation with the treatment provider, supervising staff, district attorney, and the ~~defense~~ juvenile's attorney in open court.

~~G. The judge shall be prohibited from amending the written plea agreement after a juvenile has been admitted to the drug court program. Nothing in this provision shall be construed to limit the authority of the judge to remove a juvenile from the program and proceed with adjudication or traditional processing of the juvenile as stated in the plea agreement after application, notice, and hearing.~~

STRICKEN

~~H.~~ F. The juvenile drug court judge shall be authorized to modify the responsibilities of any person responsible for the health and welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, and any adult residing with the juvenile, for noncompliance with any condition established by the court. The juvenile drug court judge is also authorized to sanction the person responsible for the health and welfare of the juvenile or any adult residing with the juvenile, for noncompliance of such person with any condition established in the court.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

§ 2-509

§ ~~7303-5.10~~. Payment of juvenile drug court program costs and fees--Juvenile Drug Court Revolving Fund

A. 1. The juvenile drug court judge ~~shall~~ may order the juvenile or the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, to pay court costs, treatment costs, drug-testing costs, ~~a program user fee~~, and supervision fees, ~~unless~~ the juvenile drug court judge shall order the juvenile and or the person responsible for the health or welfare of the juvenile are indigent to pay a program user fee, not to exceed twenty dollars (\$20.00) per month.

CHANGES
by
DMHSAS.

2. The juvenile drug court judge ~~shall~~ may establish a schedule for the payment of costs and fees.

B. 1. ~~There is hereby created~~ If the juvenile drug court judge orders the juvenile and the person responsible for the health or welfare of the juvenile to pay the above enumerated costs, there shall be created with the county treasurer of each county within this state a cash fund to be designated as the "Juvenile Drug Court Revolving Fund".

NEW

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received and any other monies designated by law for deposit into the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be expended by the juvenile drug court coordinator for the benefit and administration of the juvenile drug court program.

4. Claims against the fund shall include only expenses incurred for the administration of the juvenile drug court program and payment may be made after the claim is approved by the juvenile drug court team.

5. The necessary forms and procedures to account for the monies shall be developed and implemented by the Office of the State Auditor and Inspector.

C. 1. The cost for treatment, drug testing, and supervision ~~and program user~~ fees shall be set by the juvenile drug court team and shall reflect actual expenses or rates established by the Department of Mental Health and Substance Abuse Services and made part of the court's order for payment.

2. The costs for drug testing, and supervision, ~~and program user~~ fees shall be paid to the juvenile drug court coordinator for deposit into the county Juvenile Drug Court Revolving Fund.

3. The costs for treatment shall be paid to the respective juvenile drug court treatment provider or providers.

4. The court clerk shall collect all other costs and fees ordered.

D. 1. No court order for costs and fees shall be limited by any term of supervision, treatment, or extension thereof.

2. Court orders for costs and fees shall remain an obligation of the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 7301-1.3 of Title 10 of the Oklahoma Statutes, with court monitoring until fully paid.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

PART 6. MODIFICATIONS AND APPEALS

§ 2-601

~~§ 7303-6.1. Modifications~~

~~Any decree or order made pursuant to the provisions of this article may be modified by the court at any time. An order certifying the juvenile as an adult shall not be modified.~~

STRICKEN

Moved to
7303-4.3.
NEW # D.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-602

~~§ 7303-6.2. 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 state; provided, however, that appeals taken from a trial court's decision in a proceeding for an adjudication of juvenile delinquency or in a proceeding certifying a juvenile to stand trial as an adult or denying such certification shall be taken~~ to the Court of Criminal Appeals in the same manner as other appeals are taken to the Court of Criminal Appeals of this state, ~~and provided further that an order either certifying a juvenile to stand trial as an adult or denying such certification shall be a final order, appealable when entered.~~

STRICKEN

Moved to
7303-4.3.
NEW # D.

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~~ ~~or~~ the Court of Criminal Appeals 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 or~~ the Court of Criminal Appeals 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.

D. In the opinions of the appellate courts of this state in juvenile proceedings under the Oklahoma Juvenile Code, the initial of the child's surname shall be used rather than the child's surname.

Modified &
Moved from
7303-6.3

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-603

~~§ 7303-6.3. Use of initial in place of child's surname~~

~~In the published opinions of the appellate courts of this state in juvenile proceedings under the Oklahoma Juvenile Code, the initial of the child's surname shall be used rather than the child's surname.~~

Moved to 7303-6.2 NEW # D

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

**PART 7. SPECIFIC REQUIREMENTS RELATING TO CUSTODY AND
COURT PROCEEDINGS**

§ 2-701

~~§ 7303-7.1. Placement within religious faith of parents or child~~

~~In placing a child in the custody of an individual or in the custody 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.~~

STRICKEN

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-702

~~§ 7303-7.2. District attorneys~~

~~The district attorney shall prepare and prosecute any case or proceeding within the purview of the Oklahoma Juvenile Code.~~

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

Moved to 7301-1.1 NEW # D

END OF DOCUMENT

§ 2-703

~~§ 7303-7.3. Mileage and expert witness reimbursement~~

~~In proceedings pursuant to the Oklahoma Juvenile Code, 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.~~

Moved to 7303-4.2 # C

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-704

~~§ 7303-7.4.~~ Contempt of court

A willful violation of any provision of an order of the court issued under the provisions of the Oklahoma Juvenile Code 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 for not more than thirty (30) days in the county jail if the violator is an adult, or placement in a juvenile detention center **for not more than ten (10) days** if the violator is a juvenile, or both such fine and imprisonment or detention.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-705

~~§ 7303-7.5. Referees~~

A. Any judge who is assigned to hear juvenile cases in counties having a population in excess of ~~one hundred thousand (100,000)~~ eighty thousand (80,000), and where funding is available, may appoint a suitable person or persons to act as referee or referees, to hold office at the pleasure of the judge. Such referees shall be lawyers and shall be specially qualified for their duties. Reasonable compensation shall be fixed by the presiding judge of the administrative district ~~The judge may direct that any case, or all cases of a class or within a county to be designated by the judge, shall be heard in the first instance by a referee in the manner provided for the hearing of cases by the court. Upon the conclusion of the hearing in each case, the referee shall transmit to the court all papers relating to the case, together with the referee's findings of fact and conclusions of law, and recommendations in writing.~~

~~B. Notice of the referee's findings and recommendations shall be given to the parent, guardian or custodian of the child or to any other person concerned whose case has been heard by the referee. A hearing by the court shall be allowed upon the filing with the court of a request for such hearing, if the request is filed within three (3) days after the service of such notice. In case no hearing by the court is requested, the findings and recommendations of the referee, when confirmed by an order of the court, shall become the decree of the court.~~

B. All referees are subject to the administrative authority and assignment power of the chief judge of the juvenile court of the county. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The duties and powers of referees shall be to hear and report all matters assigned by the chief juvenile judge and to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders of judgment. All recommended orders and findings of a referee shall be subject to confirmation by the judge.

C. 1. Upon conclusion of the hearing in each case, the referee shall transmit to the judge the recommended findings and orders in writing. The recommended findings and orders of a referee becomes the findings and orders of the court when confirmed by the judge. The order of the court shall be proof of such confirmation and also of the fact that the matter was duly referred to the referee. A copy of the order entered by the referee shall be served upon the parties and counsel *instanter* or as provided in 12 O.S. § 696.2.

STRICKEN

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NEW

2. A rehearing by the judge shall be allowed if any party files a written motion for review or on the court's own motion within three (3) judicial days after notice of referee's order. The motion for review shall specify the grounds for review and the specific provisions of the recommended findings or orders disputed, and the court, upon receipt of a motion for review, shall set a time and place for a review hearing. The objecting party shall serve the motion for review and notice of hearing upon all parties to the action. Failure to timely file the motion for review shall waive any and all objections to the referee's findings and order and said order shall become the decree of the court.

The court shall accept the findings of fact of the referee unless they are clearly erroneous. The court, after a hearing, may adopt the report, modify it in whole or in part, receive further evidence or recommit it with instructions.

D. All orders and findings recommended by a referee become an effective order when countersigned by a judge and remain effective during the pendency of a review, including a remand to the referee, unless a judge:

1. Expressly stays the effect of the order;
2. Changes the order during the pendency of the review; or
3. Changes or vacates the order upon completion of the review.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-706

§ ~~7303-7.6~~. Reimbursement for care and maintenance of child and other costs and expenses

~~A. In any hearing concerning the status of a child, the court, if the court determines the parent is able to pay, shall have authority to adjudge the parent, who has been served with notice of the hearing, liable and accountable for the care and maintenance of any child or children, and to: If, after notice to the parent(s) or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses as set forth in subsections (A)(1) – (4), the court may order them to pay the same and prescribe the method of payment:~~^{DF-1}

DF-1

Reworded to give parents due process.

1. 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 fees, expert witness fees, sheriff's fees, witness fees, transcripts and postage;

2. Pay for the care and maintenance of the child, including, but not limited to, all or some part of placement services, medical care and **mental behavioral** health services, and reasonable monthly expenses, as authorized by law;

CHANGES
by
DMHSAS.

~~4. 3.~~ Reimburse the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, in whole or in part, for any costs and expenses incurred by the ~~Department Office~~ in providing any services or authorized actions taken pursuant to the Juvenile ~~Justice~~ Code for the child; and

~~5. 4.~~ Reimburse any law enforcement agency, in whole or in part, for any costs or expenses incurred by the law enforcement agency for custodial services or other authorized actions taken pursuant to the Juvenile ~~Justice~~ Code.

The Court may also order 3. Assignment of the benefits of medical insurance coverage for the child to the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs** for the period of time the child is in the custody of the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**;

B. 1. The court shall use the child support guidelines provided for in Section 118 of Title 43 of the Oklahoma Statutes in determining the amount a parent is to pay for care and maintenance of a child. If any parent is financially able but has willfully failed to pay any costs or reimbursements as ordered by the court pursuant to this section, the parent may be held in **indirect civil** contempt^{DF-2} of court and, upon conviction, shall be punished pursuant to Section 566 of Title 21 of the Oklahoma Statutes.

DF-2 This is consistent with non-payment of....

~~2. 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 reimbursements, in whole or in part, specified by this section, the court shall order the costs and reimbursements. The court may order such payments and reimbursements to be paid in installments and shall set the amount and due date of each installment.~~^{DF-3}

DF-3 Not necessary, due to language in (A) that states this succinctly.

~~3. Even though the court has previously found the parent indigent, if a parent is subsequently found to be financially able to pay costs and reimbursements, the court may order such payments and reimbursements paid in installments.~~^{DF-4}

DF-4 Restated in paragraph A.

~~C. 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.~~

DF-5 I prefer that the court enforce payment by civil indirect contempt. Not sure that courts resort to bonds or other security for purposes of execution.

^{DF-5} D. 1. The court shall have the right, upon conducting an evidentiary hearing,^{DF-6} 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,~~^{DF-7} pursuant to Section 413 of Title 43 of the Oklahoma Statutes, to the Department of Human Services Centralized Support Registry.

DF-6 Make sure parents have right to be heard and evidence of their income presented.

~~2. 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 any unused or unaccrued portion of such payment shall be returned by proper voucher, or the refund may be authorized and paid on claim properly verified and approved by the judge.~~^{DF-8}

DF-7 Stricken. Better to have Support Registry keep track of payments and disbursements.

~~E. 1. The Department may effectuate the order for payment of any costs and expenses authorized pursuant to the provisions of this section against any asset of the parent. Any assignment, attachment, garnishment, or lien against such assets shall be served upon the person in possession of the assets or shall be recorded in the office of the county clerk in the county in which the parent resides or in which the asset is located.~~

DF-8 Serious issues with advance payments and not sure court clerks have proper accounts to collect money for other unrelated agencies. So I deleted this measure.

~~2. Pursuant to Section 7302-2.1 of this title, the Department may contract on a contingency fee basis with private attorneys for the collection and enforcement of orders against such assets. Any such third-party payment shall be paid directly to the Department.~~

DF-9 Stricken because I do not believe this happens.

~~DF-9 F. When there is an existing order which provides for payment of child support, and the Department of Juvenile Justice places physical custody of the child with any person or facility without obtaining a modification of the child support order, the change in placement, by operation of law, shall create a presumption that such person or entity with whom the child was placed has legal physical custody of the child for the purposes of the payment of child support, unless the person or entity is receiving foster care payments or payments for care of the child pursuant to contract with the Office of Juvenile Affairs.~~^{DF-10}

DF-10 Stricken because it is problematic if no modification of child support exists. I do not believe that DHS CSE will recognize this legal presumption and redirect the child support payments without benefit of court order.

Current with chapters of the First Regular Session of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

PART 8. PLACEMENTS

§ 2-801

~~§ 7303-8.1.~~ Procedures and requirements for placement of adjudicated children

A. 1. Whenever the court transfers custody of a child as provided in this article, 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, medical care, education, and discipline for the child, and to authorize and consent to medical care for the child provided by a qualified health care professional. ~~Except for an emergency psychiatric admission pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, said~~ The person, institution, agency or department may provide or arrange for the provision of ~~an inpatient evaluation or~~ inpatient treatment of such minor only ~~pursuant to a court order~~ as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to said minor, as necessary and appropriate, in the absence of a specific court order for such services.

CHANGES by DMHSAS.

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 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 behavioral** 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. No state employee shall be liable for the costs of any medical care or **mental behavioral** health services provided to any child in the custody of the Office of Juvenile Affairs.

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 Sections 7303-2.1 and 7303-5.1 of this title 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, termination of parental rights and proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-802

~~§ 7303-8.2.~~ Termination of parental rights

A. The finding that a child is delinquent or in need of supervision 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 for any reason authorized in the Oklahoma Children's Code. The provision of the Oklahoma Children's Code shall govern termination of parental rights.

B. Whenever parental rights of the parents of a child have been terminated and the child is committed to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, the Executive Director of the Office of Juvenile Affairs 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.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-803

~~§ 7303-8.3.~~ Review and assessment of children committed to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs

A. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall review and assess each child committed to the ~~Department~~ Office 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.

STRICKEN

B. In making such review, the ~~Department~~ Office may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 2-804

CHANGES
by
DMHSAS.

~~§ 7303-8.4.~~ Child in need of mental health and substance abuse treatment

A. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs may provide for the care of a child who is in the custody of the Office of Juvenile Affairs and found by a court to be a minor in need of treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.;

~~1. In the home of the child, the home of a relative of the child, a foster home, a group home, a transitional living program, an independent living program or in any other community-based child care facility determined by the Department to be appropriate for the care of the child, or as otherwise provided by the Oklahoma Juvenile Code, and shall provide for the outpatient care and treatment of the child; or~~

~~2. The Department shall place a child who has been committed by a court for inpatient mental health or substance abuse treatment as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act in a Department-operated treatment center or a public or private facility as determined by the Department. The Department may place such child 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 thirty (30) days, of the case of each child in need of treatment in the custody of the Department 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, the Department shall place the child as provided in paragraph 1 of this subsection.~~

STRICKEN
Conflicts
with 43A
O.S.
§ 5-512.

B. In providing for the outpatient mental behavioral health care and the treatment of children in its custody, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall utilize to the maximum extent possible and appropriate the services available through:

1. The guidance centers operated by the State Department of Health; and
2. The Department of Mental Health and Substance Abuse Services;
3. The Department of Human Services; and
4. Community-based private agencies and organizations.

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 2-805 REPEAL

STRICKEN

~~§ 7303-8.5. Establishment of certain placement procedures—Appointment of arbitrator~~

~~A. The Office of Juvenile Affairs and the Department of Mental Health and Substance Abuse Services, no later than September 1, 1995, shall jointly:~~

~~1. Establish procedures which shall ensure that children placed in the custody of the Office of Juvenile Affairs or its Department of Juvenile Justice shall have adequate and appropriate access to mental health services, including but not limited to inpatient services in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, emergency services, group homes, and day treatment services, provided through the Oklahoma Youth Center and to other appropriate facilities and programs operated by or available through the Department of Mental Health and Substance Abuse Services; and~~

~~2. Establish administrative procedures for the timely and expeditious resolution of any dispute which may arise over the placement of a child in a facility or program operated by the Department of Mental Health and Substance Abuse Services. Such procedures shall, at a minimum, provide:~~

~~a. for a person designated by each agency to serve as its representative for the purpose of resolving any dispute which may arise over the placement of a child in an inpatient treatment facility operated by the Department of Mental Health and Substance Abuse Services, and~~

~~b. that whenever there is no resolution of a dispute over the placement of a child in an inpatient facility operated by the Department of Mental Health and Substance Abuse Services within three (3) working days after the initial request of the Office of Juvenile Affairs or the Department of Juvenile Justice for the consent of the Department of Mental Health and Substance Abuse Services for the placement of a child in a Department of Mental Health and Substance Abuse Services inpatient facility, an arbitrator provided for in subsection B of this section will be notified, and the matter will be immediately submitted for arbitration and that the decision of the arbitrator shall be a final decision, and~~

~~c. an opportunity for the child whose placement is in dispute to be represented at any arbitration proceedings regarding his placement.~~

~~B. No later than September 1, 1995, the Office of Juvenile Affairs and the Department of Mental Health and Substance Abuse Services shall jointly select an individual to serve as arbitrator and an individual to serve as an alternate in case the arbitrator is unavailable. Any person selected to serve as an arbitrator or alternate arbitrator shall:~~

~~1. Be a person qualified to make a decision regarding the placement of a child found by a court to be a child in need of mental health treatment;~~

~~2. Agree to make his services immediately available upon notification of a dispute to be resolved; and~~

~~3. Agree to provide a decision within no more than one (1) week after notification of a dispute over the placement of a child.~~

~~C. If for any reason the Department of Juvenile Justice and the Department of Mental Health and Substance Abuse Services are unable to jointly agree upon a person to serve as arbitrator by September 1, 1995, the Commission on Children and Youth shall select said person at its next regularly scheduled monthly meeting.~~

~~D. Nothing in the Oklahoma Juvenile Code shall be construed as prohibiting the Department of Mental Health and Substance Abuse Services from admitting a child, upon the voluntary application for admission by the parent or legal guardian of the child and the recommendation of a qualified mental health professional for such admission, to a facility or program operated by the Department of Mental Health and Substance Abuse Services appropriate for the care and treatment of the child.~~

~~Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.~~

~~END OF DOCUMENT~~

§ 2-806

~~§ 7303-8.6.~~ Commitment of child to custody of Department--Delivery to designated institution

When a child is committed to the custody of the Department of Juvenile Justice under the provisions of this article, the court shall order the child to be delivered by the sheriff or by a private contractor pursuant to the provisions of Section 7304-1.3 of this title to an institution, or other place, designated by the Department, and the cost of transportation shall be paid from the county's general fund. The Department of Juvenile Justice shall not be ordered to provide transportation as provided for in this section for a juvenile who has been committed to the custody of the Department and is destined for a secure institution.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE ~~IV.3~~ -- DETENTION

§ 3-101

~~§ 7304-1.1.~~ Conditions of detention of child--Detention or confinement in adult facility

A. When a child is taken into custody pursuant to the provisions of the Oklahoma Juvenile Code, 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. a. No preadjudicatory 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. If the child is being detained for the commission of a murder, the court may, if it is in the best interests of justice, extend the effective period of such an order an additional sixty (60) days.

b. Whenever the court orders a child to be held in a juvenile detention facility, an order for secure detention shall remain in force and effect for not more than ~~ten (10)~~ **fifteen (15)** days after such order. Upon an application of the district attorney and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed ~~ten (10)~~ **fifteen (15) days** after such hearing. The total period of preadjudicatory or predisposition shall not exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.



NEW
CHANGE

2. No child alleged or adjudicated to be deprived or in need of supervision or who is or appears to be a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, 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.

CHANGES
by
DMHSAS.

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 who appears to be a minor 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, with regard to a child who appears to be a minor in need of treatment, a ~~mental health or substance abuse~~ **behavioral health** treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, or released to the custody of the child's 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 the detention to be essential for the safety of the child.

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

- 1. The child is an escapee from any delinquent placement;
- 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;
- 3. The child is seriously assaultive or destructive towards others or self;
- 4. The child is detained for the commission of a crime ~~that would constitute a serious act as defined by Section 7302-9.2~~ **as specified in subsection A of Section 7306-1.1** of this title;

~~5. The child is detained for the commission of a crime that would constitute a habitual criminal act as defined by Section 7302-9.2 of this title;~~

~~6.~~ **5.** The child is currently charged with ~~a felony act~~ **any criminal offense that would constitute a felony if committed by an adult, as defined by Section 7302-9.2 of this title** or **a** misdemeanor and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on preadjudicatory 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. A child who has violated a court order and has had the order revoked or modified pursuant to Section 7303-5.3 of this title may be placed into an Office of Juvenile Affairs-designated sanction detention bed or an Office of Juvenile Affairs-approved sanction program.

~~D. A child shall be detained in secure detention only in accordance with the guidelines adopted pursuant to Section 7302-9.3 of this title.~~

D. Priority shall be given to the use of juvenile detention facilities for the detention of juvenile offenders through provisions requiring the removal from detention of a juvenile with a lower priority status if an empty detention bed is not available at the time of referral of a juvenile with a higher priority status and if the juvenile with a higher priority status would be more of a danger to the public than the juvenile with the lower priority status;

MOVED FROM 7302-9.3.6

E. 1. Except as otherwise provided in this section, no child shall 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. the court of jurisdiction is outside of the Standard Metropolitan Statistical Area as defined by the Bureau of Census, and
- e. there is no existing acceptable alternative placement for the child, and
- f. the jail, adult lockup or adult detention facility provides sight and sound separation for juveniles, pursuant to standards required by subsection E of Section 7304-1.3 of this title, or
- g. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Office of Juvenile Affairs, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:
 - (1) 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,
 - (2) 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

- (3) 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 juvenile training school or from a ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs** group home from being held in any jail certified by 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-year old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

4. Nothing in this section shall preclude detaining in a county jail or other adult detention facility a person provided for in Section 7304-1.2 of this title if written or electronically transmitted confirmation is received from the state seeking return of the individual that the person is a person provided for in Section 7304-1.2 of this title and if, during the time of detention, the person is detained in a facility meeting the requirements of 7304-1.3 of this title.

5. Nothing in this section shall preclude detaining a person, whose age is not immediately ascertainable and who is being detained for the commission of a felony, in a jail certified by the State Department of Health, a police station or similar law enforcement office for up to twenty-four (24) hours for the purpose of determining whether or not the person is a child, if:

- a. there is a reasonable belief that the person is eighteen (18) years of age or older,
- b. there is a reasonable belief that a felony has been committed by the person,

- c. a court order for such detention is obtained from a judge of the district court within six (6) hours of initially detaining the person,
- d. there is no juvenile detention facility that has space available for the person and that is within thirty (30) miles of the jail, police station, or law enforcement office in which the person is to be detained, and
- e. during the time of detention the person is detained in a facility meeting the requirements of subparagraph g of paragraph 1 of this subsection.

The time limitation provided for in this paragraph shall include the time the person is detained prior to the issuance of the court order.

The time limitation provided for in this paragraph shall not include the actual travel time required for transporting the person to the jail, police station, or similar law enforcement office. If the time limitation established by this paragraph is exceeded, this circumstance shall not constitute a defense in any subsequent delinquency or criminal proceeding.

F. 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.

G. 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, providing that the use of the juvenile detention facility meets the requirements of the Oklahoma Juvenile Code. The Indian tribe may contract with any juvenile detention facility for the providing of detention services.

H. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 3-102

§ ~~7304-1.2~~. Persons under 18 years of age who have fled from another state considered adults for purposes of detention only in certain cases

Whenever a person under eighteen (18) years of age, who has fled from another state, is taken into custody, that person shall be considered an adult only for the purposes of detention if:

1. The person has been charged with commission of an offense in the other state which is considered a felony in that state; and
2. The person is certified as an adult in that state for the purpose of criminal prosecution for said felony or has reached the statutory age of majority in that state; and
3. The other state is seeking the return of the individual to its jurisdiction and provides written or electronically transmitted confirmation, which is received within forty-eight (48) hours after the person is taken into custody.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 3-103

~~§ 7304-1.3.~~ Temporary detention--Transportation--Certification of juvenile detention facilities

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. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall not be ordered to provide detention unless said ~~Department Office~~ Office has designated and is operating detention services or facilities.

B. County sheriffs, their designee, private contractors under contract with the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs for transportation services, or juvenile court officers shall provide for the transportation of juveniles to and from secure detention for purposes of admission, interfacility transfer, discharge, medical or dental attention, court appearance, or placement designated by the ~~Department Office~~ Office. No private contract for transportation services shall be entered into by the ~~Department Office~~ Office unless the private contractor demonstrates to the satisfaction of the ~~Department Office~~ Office that such contractor is able to obtain insurance or provide self-insurance to indemnify the ~~Department Office~~ Office against possible lawsuits and meets the requirements of subparagraphs a, b and d of paragraph 4 of subsection C of this section. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall not be ordered to provide transportation for a juvenile who is detained in or is destined for secure detention. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall provide reimbursement to the entity transporting juveniles for necessary and actual expenses for transporting juveniles who are detained in or destined for a secure detention center as follows:

1. A fee for the cost of personal services at the rate of Twelve Dollars (\$12.00) per hour;
2. Mileage reimbursement for each mile actually traveled at the rate established in the State Travel Reimbursement Act;
3. Meals for transporting personnel, not to exceed ~~Six Seven~~ Dollars ~~(\$6.00)~~ (\$7.00) per meal; and
4. Meals for juveniles being transported, not to exceed ~~Six Seven~~ Dollars ~~(\$6.00)~~ (\$7.00) per meal.

CHANGED to conform with Deprived language change.

The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs shall process and mail reimbursement claims within sixty (60) days of receipt. Payments for services provided by a county sheriff's office shall be paid to the county and deposited in the sheriff service fee account.

C. 1. All juvenile detention facilities shall be certified by the Office of Juvenile Affairs. To be certified, a juvenile detention facility shall be required to meet standards for certification promulgated by the Board of Juvenile Affairs. ~~Until such standards are promulgated, the standards promulgated by the Oklahoma Commission for Human Services shall remain in effect.~~

STRICKEN

2. The board of county commissioners of every county shall provide for the temporary detention of a child who is or who may be subject to secure detention and may construct a building or rent space for such purpose. The boards of county commissioners shall provide for temporary detention services and facilities in accordance with the provisions of the State Plan for the Establishment of Juvenile Detention Services adopted pursuant to subsection D of this section and in accordance with Section 7302-6.8 of this title. The boards of county commissioners are hereby authorized to create multi-county trust authorities for the purpose of operating juvenile detention facilities.

3. In order to operate the juvenile detention facilities designated in the State Plan for the Establishment of Juvenile Detention Services and in Section 7302-6.8 of this title, the boards of county commissioners in the designated host counties shall:

- a. operate the juvenile detention facility through a statutorily constituted juvenile bureau 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, federally recognized tribe, or single or multi-county trust authority for the operation of the juvenile detention facility. In the event any board of county commissioners contracts with a public or private agency or a federally recognized tribe, pursuant to the provisions of this section, the **Department Office** is authorized to directly contract with and pay such public or private agency or federally recognized tribe for provision of detention services. Any contract with a federally recognized tribe shall become effective upon approval by the board of county commissioners.

4. Management contracts for privately operated detention facilities shall be negotiated with the firm found most qualified by the board of county commissioners. However, no private management contract shall be entered into by the board 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 county against possible lawsuits and to compensate the county 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 of the **Department of Juvenile Justice Office of Juvenile Affairs.**

5. All counties to be served by a secure juvenile detention facility may, upon the opening of such facility, contract with the operators for the use of the facility for the temporary detention of children who are subject to secure detention; provided, however, a jail, adult lockup, or other adult detention facility may be used for the secure detention of a child as provided for in Section 7304-1.1 of this title.

6. Expenses incurred in carrying out the provisions of this section shall be paid from the general fund of the county or from other public funds lawfully appropriated for such purposes or from private funds that are available for such purposes. A county may also issue bonds for the construction of detention facilities.

7. The operation of a juvenile detention facility by a county shall constitute a quasi-judicial function and is also hereby declared to be a function of the State of Oklahoma for purposes of the Eleventh Amendment to the United States Constitution. In addition, no contract authorized by the provisions of this section for the providing of transportation services or for the operation of a juvenile detention facility shall be awarded until the contractor demonstrates to the satisfaction of the county that the contractor has obtained liability insurance with the limits specified by the Governmental Tort Claims Act against lawsuits arising from the operation of the juvenile detention facility by the contractor, or if the contract is for the providing of transportation services, the contractor has obtained liability insurance with the limits specified by the Governmental Tort Claims Act against lawsuits arising from the transportation of juveniles as authorized by subsection A of this section.

D. The Board of Juvenile Affairs, from monies appropriated for that purpose, shall develop, adopt, and implement a plan for secure juvenile detention services and alternatives to secure detention, to be known as the State Plan for the Establishment of Juvenile Detention Services, which shall provide for the establishment of juvenile detention facilities and services with due regard for appropriate geographical distribution and existing juvenile detention programs operated by statutorily constituted juvenile bureaus. Said plan may be amended or modified by the Board as necessary and appropriate. Until said plan is adopted by the Board, the plan adopted by the Oklahoma Commission for Human Services shall remain in effect.

1. The Board of Juvenile Affairs shall establish procedures for the letting of contracts or grants, including grants to existing juvenile detention programs operated by statutorily constituted juvenile bureaus, and the conditions and

requirements for the receipt of said grants or contracts for juvenile detention services and facilities as provided in this section and Section 7302-4.1 of this title. A copy of such procedures shall be made available to any member of the general public upon request. All such grants or contracts shall require the participation of local resources in the funding of juvenile detention facilities. A contract for services shall be based upon a formula approved by the Board which shall set the contract amount in accordance with the services offered and the degree of compliance with standards for certification. ~~Until the procedures are established by the Board, the procedures established by the Commission for Human Services shall remain in effect.~~

STRICKEN

2. The Board of Juvenile Affairs shall establish standards for the certification of detention services and juvenile detention facilities. Such standards may include, but not be limited to: Screening for detention; education and recreation opportunities for juveniles in secure detention; and accreditation by the American Correctional Association. As a condition of continuing eligibility for grants or contracts, secure juvenile detention services and facilities shall be certified by the Board within two (2) years of the date of the initial grant or contract.

E. The State Department of Health, with the assistance of the Office of Juvenile Affairs, shall establish standards for the certification of jails, adult lockups, and adult detention facilities used to detain juveniles. Such standards shall include but not be limited to: Separation of juveniles from adults; supervision of juveniles; and health and safety measures for juveniles. The Department of Health is authorized to inspect any jail, adult lockup, or adult detention facility for the purpose of determining compliance with such standards. No jail, adult lockup, or other adult detention facility shall be used to detain juveniles unless such jail, adult lockup, or other adult detention facility complies with the standards established by the Department of Health and is designated as a place for the detention of juveniles by the judge having juvenile docket responsibility in the county from a list of eligible facilities supplied by the Department of Health.

The development and approval of the standards provided for in this paragraph shall comply with the provisions of the Administrative Procedures Act.

F. The State Board of Health shall promulgate rules providing for the routine recording and reporting of the use of any adult jail, lockup or other adult facility for the detention of any person under the age of eighteen (18).

1. For the purpose of ensuring the uniformity and compatibility of information related to the detention of persons under age eighteen (18), said rules shall be reviewed and approved by the Oklahoma Commission on Children and Youth prior to their adoption by the Board; and

2. Said records of detention shall be reviewed during each routine inspection of adult jails, lockups or other adult detention facilities inspected by the State Department of Health and a statistical report of said detentions shall be submitted to the Office of Juvenile Affairs at least every six (6) months in a form approved by the Board of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

§ 3-104

§—7304-1.4. Tort liability coverage of juvenile detention services-- Contracts between boards of county commissioners

The board of county commissioners of each county in this state is authorized to enter into a contract with the county commissioners of another county or counties to provide insurance coverage for any tort liability risk incurred as a result of providing or providing for the temporary detention of children in a juvenile detention facility pursuant to the provisions of the Oklahoma Juvenile Code.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE V. 4 -- JUVENILE BUREAUS

§ 4-101

~~§ 7305-1.1. Juvenile bureau and citizens' advisory committee~~

S.B. 1763
amendment,
effective
11-1-08.

A. In each county having a population of eighty thousand (80,000) or more, as shown by the last preceding Federal Decennial Census, there is created a juvenile bureau and a citizens' advisory committee. **For legal representation purposes only, the juvenile bureau and all facilities operated by the juvenile bureau are designated as a department of the county.**

B. In each county having a duly constituted juvenile bureau as of January 1, 2005, as provided for in subsection A of this section, the juvenile bureau shall remain in place and continue in operation. No other counties shall establish juvenile bureaus.

~~C. The Department of Juvenile Justice shall provide intake, probation and parole services in all counties not having juvenile bureaus as provided for in Section 7302-2.3 of this title.~~

Modified and
Moved to
7302-5.1.A

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 4-102

§ ~~7305-1.2~~. Director and other personnel

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7305-1.2, is amended to read as follows:

Section 7305-1.2. The chief administrative officer of the juvenile bureau shall be a director, who shall be subject to the direction and supervision of the judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District within budgetary limitations. There shall be sufficient counselors, clerks and assistant clerks to properly conduct the work of the bureau. The director shall be a person over the age of thirty (30) years, of good character, qualified in social work, and familiar with the problems of juvenile delinquency and dependency. The director shall be appointed by the judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District, from a list of eligible persons established by the citizens' advisory committee at the request of the Presiding Judge of the Judicial Administrative District. Counselors and other persons may be employed by the director with the approval of the judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District. The director may be removed by the judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District at any time. The counselors and other employees may be removed by the director.

SECTION 4. This act shall become effective November 1, 2007.

Approved May 31, 2007.

OK LEGIS 176 (2007)

END OF DOCUMENT

§ 4-103

§ 7305-1.3. Administrative work of court--Uniformity of procedures and care--Information as privileged

A. The director, under the general supervision of the judge, shall organize, direct and develop the administrative work of the court, including the social, financial and clerical work, and the director shall perform such other duties as to children as any judge of the court shall direct. The technical and professional employees shall have charge of cases assigned to them for investigation or treatment and shall perform such other duties as may be assigned to them by the director.

B. To assure uniformity of procedures and care throughout the state, each juvenile bureau shall perform its statutory duties for children alleged or adjudicated to be in need of supervision or delinquent in accordance with the procedures and guidelines promulgated by the Board of Juvenile Affairs and implemented by the ~~Department of Juvenile Justice of the~~ Office of Juvenile Affairs.

~~C. All information obtained in discharge of official duty by any officer or other employee of the court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.~~

Moved to 7307-1.1.A

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 4-104

§ ~~7305-1.4~~. Investigations and reports--Legal proceedings

A. It shall be the duty of the director and other employees of the juvenile bureau, at the request of and under the direction of the court, to investigate and report on all cases that are pending in the Juvenile Docket of the district court, and to investigate and report on all cases of delinquent children and children in need of supervision, residing or being in the county. The director and counselors shall have the power to file, or cause to be filed, information or complaint and to institute and commence the necessary legal proceedings for the purpose of carrying into effect the laws of this state relating to delinquent children and children in need of supervision, and the director and counselors shall investigate and report to the court for appropriate legal action the existence and maintenance of any place or public resort or institution in the county which is or may be detrimental to morals and welfare of children. It shall be the duty of the court clerk to assign adequate personnel to perform the clerical duties necessary and incidental to the operation of the Juvenile Docket of the court.

B. All penal, eleemosynary or other institutions under the jurisdiction of the State of Oklahoma and any law enforcement agency or officer of the State of Oklahoma or of any city or county within the state shall furnish the director and assistants of the director with any and all information requested by them pertaining to any person under the jurisdiction of the court.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 4-105

~~§ 7305-1.5. Arrests--Service of process~~

A. The director or assistants to the director may arrest without a warrant a probationer, parolee or any person who is a temporary or permanent ward of the court, or may deputize any other officer or person with power of arrest by giving such officer or person a written statement setting forth that a probationer, parolee or ward of the court has in the judgment of the director or assistants violated the conditions of probation.

B. The director and assistants to the director shall have and are hereby vested with authority to serve all process issued by the court in juvenile dependent, neglect and delinquency cases, and hereby are vested with authority to make arrests and transport juveniles in accordance with the laws of this state.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 4-106

§ ~~7305-1.6~~. Transportation of juveniles--Expenses

The director or assistants to the director shall have authority to transport all juveniles found to come within the purview of this article to place or places where the order of the court requires such juveniles to be confined or placed, and the director and assistants to the director shall be paid the actual expenses incurred in carrying out the orders and judgment of the court in addition to a mileage fee of ten cents (\$0.10) per mile for miles actually traveled in executing the duties of the director or assistants by order of the judge.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 4-107

~~§ 7305-1.7. Salaries and expenses--Offices and equipment~~

A. 1. The salary of the director and other employees of the bureau and any detention home established pursuant to Section 7305-1.8 of this title shall be fixed by the judge of the Juvenile Division, subject to the general administrative authority of the county commissioners of the contracting county. The salary of the director shall not exceed ninety percent (90%) of salaries of county Class A officers. ~~The salary of a referee shall not be greater than that of the associate district judge of the county.~~

STRICKEN

2. The salary of supervisors with intake or ~~intake-probational~~ probation duties shall not ~~be less than Twelve Thousand Three Hundred Dollars (\$12,300.00) per year, and not more than~~ exceed eighty-five percent (85%) of Class A county officers.

STRICKEN

3. The salary of employees with case, probation, counseling or juvenile duties shall not ~~be less than Ten Thousand Five Hundred Dollars (\$10,500.00) per year, and not more than~~ exceed eighty percent (80%) of Class A county officers.

STRICKEN

B. The judge of the Juvenile Division, subject to the general administrative authority of the county commissioners of the contracting county, may fix a limit on the amount of expenses that may be incurred by the director and assistants to the director, such limit to be in the judgment of the judge adequate to care for the expenses necessary to carrying out the orders of the court in an efficient and expedient manner. The director and assistants to the director and other personnel of the court shall keep and maintain their offices at the place where the office of the judge of the court is kept, unless the judge of the Juvenile Division, subject to the general administrative authority of the county commissioners of the contracting county, shall direct otherwise. The offices of the director and assistants to the director shall contain adequate equipment, desk space and consultation rooms necessary for appropriate office procedure.

C. In addition to their salaries, the director and assistants to the director shall be reimbursed at the same rate as state employees for mileage traveled by them in the investigation of court cases and in supervising probationers; ~~with the approval of the judge in charge of the Juvenile Division,~~ the director and assistants may also receive reimbursement, at the rate and in the manner applicable to other county officers, for actual and necessary expenses incurred by them in attending conferences, meetings, seminars or official business of the court either within or outside of the State of Oklahoma.

STRICKEN

D. In all counties having a juvenile bureau, the budget of the juvenile bureau for salaries and expenses of the director, counselors and other employees shall be established and funded as follows:

1. All expenses incurred in complying with the provisions of this article shall be a county charge;
2. The salaries and other compensation of all employees of the juvenile bureau shall be fixed by the judge within the limit of the total appropriations therefor; and
3. It is made the duty of the county excise board to make the necessary appropriation and levy for the payment of salaries of the director and all other employees, together with the expenses of administering the bureau, consistent with the duty to do likewise with the budget estimates of other county officers under the board's jurisdiction, as required by the Constitution and laws of this state.

**S.B. 1763
amendment,
effective
11-1-08.**

4. Except in instances where it is entitled to representation because of insurance coverage, the district attorney of the county in which the juvenile bureau is located shall represent the juvenile bureau and any employee who was acting in his or her official capacity at the time of the act or omission complained of in any lawsuit. If the district attorney has a conflict of interest or otherwise declines to represent the juvenile bureau or its employees, the county commissioners may request the assistance of the Attorney General or authorize the employment of private counsel for the juvenile bureau and its employees in their official capacity.

~~E. All expenses incurred by the director and counselor in carrying out the orders of the judge of the court shall be reported to the judge of the Juvenile Division under oath, and such expenses shall not be paid by the board of county commissioners until such judge shall, by order entered of record, approve such accounts, and such judge may hear testimony as to the correctness thereof. A certified copy of the order of approval shall be filed in the office of the county clerk and shall be authority to the board of county commissioners to disburse the necessary funds in payment thereof, provided payment of the same comes within the budgetary provisions of the bureau as established in subsection D of this section.~~

STRICKEN

Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.

END OF DOCUMENT

§ 4-108

§ ~~7305-1.8~~. Detention home

A detention home may be established as a part of the juvenile bureau of the court. Judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District, may appoint necessary technicians and other employees for such home in the same manner as is provided herein for the appointment of other employees of the bureau, their salaries to be fixed and paid in the same manner as the salaries of other employees.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 4-109

~~§ 7305-1.9. Citizens' advisory committee~~

A. To aid in the more effective administration of the statutes relating to juveniles and for the purpose of counsel and advice, there is created a citizens' advisory committee consisting of a minimum of seven members, to serve without pay, appointed by the judge of the Juvenile Division assigned to try juvenile cases, who shall serve for a period of four (4) years and until their successors are appointed.

B. The membership of such committee shall contain an official or employee of the public schools of the county, a professional social worker employed by any recognized social agency in the county, a member of the board of county commissioners of the county, an attorney licensed to practice in the State of Oklahoma to be selected by the members of the County Bar Association of the county, and three other members selected at will by the judge of the Juvenile Division; and of the seven members, three shall be women, and all members shall, at the date of their appointment, be legal residents of the county.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 4-110

~~§ 7305-1.10. Appointment of personnel for juvenile docket of district court~~

The provisions of this article shall govern the appointment of all personnel for the Juvenile Docket of the district court in any county referred to in Section 7305-1.1 of this title. Provided, employees now holding positions in a Juvenile or Children's Court shall remain in similar positions in the juvenile bureau until such time as the judge of the Juvenile Division, subject to the general administrative authority of the Presiding Judge of the Judicial Administrative District, shall otherwise direct, and any balances in appropriations for the maintenance and operation of the administrative personnel and organization under a Juvenile Court Act or Children's Court Act shall continue to be appropriated and shall be used for the operation of the juvenile bureau in the performance of duties set forth in this article.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE VI - TREATMENT OF SERIOUS ACTS

PART 1. REVERSE CERTIFICATION

§ 5-101

§ 7306-1.1. Juveniles of certain ages to be considered adults for certain offenses committed--Detention--Warrants--Certification as child

A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping, robbery with a dangerous weapon, robbery in the first degree if personal injury results, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree after three or more adjudications for committing either burglary in the first degree or burglary in the second degree, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, sodomy, trafficking in illegal drugs, manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, or assault and battery with a deadly weapon, shall be considered as an adult.

B. Any person thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years of age who is charged with murder in the first degree shall be considered as an adult.

C. Upon the arrest and detention, such accused person 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.

D. 1. 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 the preliminary hearing, 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 a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by

mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

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

At the conclusion of the state's case at the criminal preliminary hearing, 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 whether to bind the accused over for 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.

F. Upon completion of the criminal preliminary hearing, 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.

G. An order certifying a person as a child or denying the request for certification as a child shall be a final order, appealable when entered.

H. The provisions of this section shall apply only to offenses committed before January 1, 1998.

10 Okl. St. Ann. § 7306-1.1, OK ST T. 10 § 7306-1.1

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

PART 2. YOUTHFUL OFFENDER ACT

§ 5-201

§ 7306-2.1. Short title--Implementation date

Sections 7306-2.1 through 7306-2.13 of this title shall be known and may be cited as the "Youthful Offender Act". The Youthful Offender Act shall be implemented beginning January 1, 1998.

10 Okl. St. Ann. § 7306-2.1, OK ST T. 10 § 7306-2.1

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-202

~~§ 7306-2.2. Definitions--Purpose~~

A. For the purposes of the Youthful Offender Act:

1. "Youthful offender" means a person:

- a. thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree and certified as a youthful offender as provided by Section 7306-2.5 of this title,
- b. fifteen (15), sixteen (16), or seventeen (17) years of age and charged with a crime listed in subsection A of Section 7306-2.6 of this title, and
- c. sixteen (16) or seventeen (17) years of age and charged with a crime listed in subsection B of Section 7306-2.6 of this title,

if the offense was committed on or after January 1, 1998;

2. "Sentenced as a youthful offender" means the imposition of a court order making disposition of a youthful offender as provided by Section 7306-2.9 of this title which shall constitute an adult criminal sentence if the youthful offender is transferred to the custody or supervision of the Department of Corrections; and

3. "Next friend" means an individual or executive of an organization who has assumed a parental role without formal legal proceedings, but to all objective observers is readily identified as custodian or guardian in fact.

B. It is the purpose of the Youthful Offender Act to better ensure the public safety by holding youths accountable for the commission of serious crimes, while affording courts methods of rehabilitation for those youths the courts determine, at their discretion, may be amenable to such methods. It is the further purpose of the Youthful Offender Act to allow those youthful offenders whom the courts find to be amenable to rehabilitation by the methods prescribed in the Youthful Offender Act to be placed in the custody or under the supervision of the Office of Juvenile Affairs for the purpose of accessing the rehabilitative programs provided by that Office.

10 Okl. St. Ann. § 7306-2.2, OK ST T. 10 § 7306-2.2

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-203

§ 7306-2.3. Court proceedings--Jurisdiction

A. 1. A child who is charged with having violated any state statute or municipal ordinance other than as provided in Sections 7306-2.5 and 7306- 2.6 of this title shall not be tried in a criminal action as an adult or a youthful offender, but in a juvenile proceeding, unless certified as an adult pursuant to Section 7303-4.3 of this title.

2. However, when multiple offenses occur within the same course of conduct within the same county and the person is prosecuted for at least one offense as a youthful offender pursuant to Section 7306-2.5 or 7306-2.6 of this title, then all the charges may be prosecuted under the same action pursuant to the provisions of the Youthful Offender Act, if so ordered by the court. The decision to join the cases shall not be appealable as a final order. If the offense listed in Section 7306-2.5 or Section 7306-2.6 of this title is subsequently dismissed for any reason, then any remaining pending charges shall be transferred to the juvenile court.

B. 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 or municipal 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.

C. Nothing in this section shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.

10 Okl. St. Ann. § 7306-2.3, OK ST T. 10 § 7306-2.3

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 5-204

~~§ 7306-2.4.~~ Treatment of a child certified as an adult or youthful offender in criminal proceedings

A. A child who is arrested for an offense pursuant to subsection A or B of Section 7306-2.6 of this title, or who is certified as a youthful offender pursuant to Section 7306-2.5 of this title, shall be charged by information in the same manner as provided for adults.

B. If the child is not otherwise represented by counsel and requests an attorney prior to or during interrogation, or whenever charged by information as provided in paragraph A, the court shall appoint an attorney, who shall not be a district attorney for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the Court only upon determination by the Court that the parent, guardian or legal custodian is found to be indigent.

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~~B.~~ **C.** When a person is certified to stand trial as an adult or a youthful offender as provided by the Youthful Offender Act, the accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply, except as provided for in the Youthful Offender Act. All youthful offender court records for such a person shall be considered adult records and shall not be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

~~C.~~ **D.** Proceedings against a youthful offender shall be heard by any judge of the district court.

~~D.~~ **E.** Upon arrest and detention of a person subject to the provisions of Section 7306-2.5 or 7306-2.6 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a county jail if separated by sight and sound from the adult population as otherwise authorized by law. If no such county jail is available, then such person may be detained at a juvenile detention facility. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Office of Juvenile Affairs of any such arrest and detention.

~~E.~~ **F.** Upon certification for the imposition of an adult sentence, a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 7306-2.8 of this title, the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

F. G. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court as a juvenile delinquent or youthful offender processes in any further proceedings if:

1. The child or youthful offender 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 sentence has been deferred; or

2. The youthful offender has been certified for the imposition of an adult sentence as provided by Section 7306-2.8 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred.

G. H. Except as otherwise provided in the Youthful Offender Act, a person who has been certified as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age.

All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult proceedings.

10 Okl. St. Ann. § 7306-2.4, OK ST T. 10 § 7306-2.4

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-205

§ ~~7306-2.5~~. Certification as youthful offender or juvenile

A. Any person thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree shall be held accountable for the act as if the person were an adult; provided, the person may be certified as a youthful offender or a juvenile as provided by this section, unless the person is subject to the provisions of subsection ~~F~~ G of Section 7306-2.4 of this title.

B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree at that time shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. The person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Oklahoma Statutes shall apply. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

C. 1. Upon the filing of an adult criminal 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 the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a youthful offender to the district court for the purpose of prosecution as a youthful offender.

2. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person. The court may inquire of the accused as to the whereabouts of his or her parents, guardian, or next friend in order to avoid unnecessary delay in the proceedings.

3. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a thorough search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

D. 1. The accused person shall file any motions for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing. If both a motion for certification as a youthful offender and a motion for certification as a juvenile are filed, they shall both be heard at the same time. No motion for certification as a youthful offender or certification as a juvenile may be filed after the time specified in this subsection. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

2. The court shall commence a preliminary hearing within ninety (90) days of the filing of the information, pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed a crime. If the preliminary hearing is not commenced within ninety (90) days of the date the accused person is charged, the district court shall hold a hearing to determine the reasons for delay utilizing the procedure set out in Section 812.2 of Title 22 of the Oklahoma Statutes, to ensure the preliminary hearing is expedited. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the parents of the accused, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

3. At the conclusion of the state's case at the criminal preliminary hearing, the state and the accused person may offer evidence to support or oppose the motions for certification as a youthful offender or an alleged juvenile delinquent.

E. The court shall rule on any motions for certification as a youthful offender or an alleged juvenile delinquent before ruling on whether to bind the accused over for trial. When ruling on a motion for certification as a youthful offender or juvenile, the court shall give consideration to the following guidelines with greatest weight to be given to paragraphs 1, 2 and 3:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;

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;
4. The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living;
5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system;
6. The reasonable likelihood of rehabilitation of the accused person if such person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

The court, in its decision on a motion for certification as a youthful offender or juvenile, shall detail findings of fact and conclusions of law to each of the above considerations, and shall state that the court has considered each of the guidelines in reaching its decision.

F. The order certifying a person as a youthful offender or an alleged juvenile delinquent or denying the request for certification as either a youthful offender or an alleged juvenile delinquent shall be a final order, appealable to the Court of Criminal Appeals when entered.

G. An order certifying the accused person as a youthful offender or an alleged juvenile delinquent shall not be reviewable by the trial court.

H. If the accused person is prosecuted as an adult and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred, the person may be incarcerated with the adult population and shall be prosecuted as an adult in all subsequent criminal proceedings.

10 Okl. St. Ann. § 7306-2.5, OK ST T. 10 § 7306-2.5

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-206

§ ~~7306-2.6~~. Certain acts mandating youthful offender status--Filing of delinquency petition or youthful offender information--Warrant, certification process--Guidelines

A. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with:

1. Murder in the second degree;
2. Kidnapping;
3. Manslaughter in the first degree;
4. Robbery with a dangerous weapon or attempt thereof;
5. Robbery with a firearm or attempt thereof;
6. Rape in the first degree or attempt thereof;
7. Rape by instrumentation or attempt thereof;
8. Forcible sodomy;
9. Lewd molestation;
10. Arson in the first degree or attempt thereof; or
11. Any offense in violation of Section 652 of Title 21 of the Oklahoma Statutes, shall be held accountable for his acts as a youthful offender.

B. Any person sixteen (16) or seventeen (17) years of age who is charged with:

1. Burglary in the first degree or attempted burglary in the first degree;
2. Battery or assault and battery on a state employee or contractor while in the custody or supervision of the Office of Juvenile Affairs;
3. Aggravated assault and battery of a police officer;
4. Intimidating a witness;
5. Trafficking in or manufacturing illegal drugs;

6. Assault or assault and battery with a deadly weapon;

7. Maiming;

8. Residential burglary in the second degree after two or more adjudications that are separated in time for delinquency for committing burglary in the first degree or residential burglary in the second degree;

9. Rape in the second degree; or

10. ~~Use of a firearm while in commission of a felony~~ Child abuse,

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shall be held accountable for his acts as a youthful offender.

C. The district attorney may file a petition alleging the person to be a delinquent or may file an information against the accused person charging the person as a youthful offender. The district attorney shall notify the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs upon the filing of youthful offender charges.

D. 1. Upon the filing of the information against such alleged youthful offender, 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 the preliminary hearing, and to have an attorney present.

2. The warrant shall be personally served together with a certified copy of the information on the alleged youthful offender and on a custodial parent, guardian or next friend of the accused person.

3. When personal service of a custodial parent, guardian or next friend of the alleged youthful offender cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

E. The court shall commence a preliminary hearing within ninety (90) days of the filing of the information pursuant to Section 258 of Title 22 of the Oklahoma Statutes, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed the crime. If the preliminary hearing is not commenced within ninety (90) days, the state shall be prohibited from seeking an adult sentence unless the ninety-day requirement is waived by the defendant. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Oklahoma shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the accused parent, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

F. 1. The accused person may file a motion for certification to the juvenile justice system before the start of the criminal preliminary hearing:

- a. upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person,
- b. at the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

2. If no motion to certify the accused person to the juvenile justice system has been filed, at the conclusion of the criminal preliminary hearing the court may on its own motion hold a hearing on the matter of the certification of the accused youthful offender to the juvenile system.

3. The court shall rule on the certification motion before ruling on whether to bind the accused over for trial. When ruling on the certification motion, the court shall give consideration to the following guidelines with the greatest weight given to subparagraphs a, b and c:

- a. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons, and if personal injury resulted, the degree of personal injury,

- c. 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,
- d. the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the accused person if the accused is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and
- g. whether the offense occurred while the accused person was escaping or in an escape status from an institution for youthful offenders or juvenile delinquents.

4. In its decision on the motion for certification as an alleged juvenile delinquent, the court shall detail findings of fact and conclusions of law to each of the above considerations and shall state that the court has considered each of the guidelines in reaching its decision.

5. An order certifying a person or denying such certification to the juvenile justice system shall be a final order, appealable when entered.

G. Upon conviction, sentence may be imposed as a sentence for a youthful offender as provided by Section 7306-2.9 of this title. If the youthful offender sentence is imposed as an adult sentence as provided by Section 7306-2.8 of this title, the convicted person may be incarcerated with the adult population.

10 Okl. St. Ann. § 7306-2.6, OK ST T. 10 § 7306-2.6

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 7306-2.7. Repealed by Laws 1997, c. 293, § 43, eff. July 1, 1997

10 Okl. St. Ann. § 7306-2.7, OK ST T. 10 § 7306-2.7

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 5-207

§ 7306-2.7a. Applicability to youths aged seventeen

It is the intent of the Legislature to fully utilize the Youthful Offender Act as a means to protect the public while rehabilitating and holding youth accountable for serious crimes. The Legislature finds that eligible seventeen-year-olds should have the opportunity to be processed as youthful offenders as provided by law and held accountable through the various provisions of the Youthful Offender Act for custody, institutional placement, supervision, extended jurisdiction within the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, and the ability to transfer youthful offenders to the Department of Corrections when incarceration or additional supervision is required beyond the maximum age allowed in the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs. No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the youth's age being seventeen (17) years. To deny access to an otherwise eligible older youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.

10 Okl. St. Ann. § 7306-2.7a, OK ST T. 10 § 7306-2.7a

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-208

~~§ 7306-2.8.~~ Motion by district attorney to sentence child as an adult-- Considerations-- Standard of proof--Sentencing

A. Whenever the district attorney believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the district attorney shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not more than thirty (30) days following formal arraignment and such motion will be ruled upon by the trial court; or the district attorney may file the motion to impose adult sentence fourteen (14) days prior to the start of the preliminary hearing and the preliminary hearing magistrate will rule on that motion. The district attorney must elect when to file the motion for adult sentence and if the motion is filed and argued to the magistrate, it cannot again be filed and argued to the trial court after arraignment; or

2. If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty or nolo contendere, the court shall grant the state ten (10) days from that date to file the motion required by this subsection, if requested by the state.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs.

2. At the hearing the court shall consider, with the greatest weight given to subparagraphs a, b and c:

- a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons and, if personal injury resulted, the degree of injury,
- c. 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,
- d. the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,

- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the accused person if the accused person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and
- g. whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

In its decision on the motion of the state for imposition of an adult sentence, the court shall detail findings of fact and conclusions of law to each of the considerations in subsection C of this section and shall state that the court has considered each of its guidelines in reaching its decision.

E. An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered.

F. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of supervision, incarceration and in all subsequent criminal proceedings.

G. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs of not less than Twenty-five Dollars (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the presentence investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

10 Okl. St. Ann. § 7306-2.8, OK ST T. 10 § 7306-2.8
Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.
END OF DOCUMENT

§ 5-209

~~§ 7306-2.9. Presentence investigation--Hearing--Factors and considerations-- Imposition of sentence--Confinement~~

A. Upon a verdict of guilty or a plea of guilty or nolo contendere of a youthful offender and prior to the imposition of a youthful offender sentence by the court:

1. A youthful offender presentence investigation shall be conducted unless waived by the youthful offender with approval of the court or unless an investigation is conducted pursuant to subsection C of Section 7306-2.8 of this title. Any presentence investigation required by this section shall be conducted by the Office of Juvenile Affairs; and

2. The court shall conduct a hearing and shall consider, with the greatest weight given to subparagraphs a, b and c:

- a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons and, if personal injury resulted, the degree of personal injury,
- c. the record and past history of the person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,
- d. the sophistication and maturity of the person and the person's capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- e. the prospects for adequate protection of the public if the person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the person if found to have committed the offense, by the use of procedures and facilities currently available to the juvenile, and
- g. whether the offense occurred while the person was escaping or on escape status from an institution for youthful offenders or delinquent children.

B. 1. After the hearing and consideration of the report of the presentence investigation, the court shall impose sentence as a youthful offender, and such youthful offender shall be subject to the same type of sentencing procedures and duration of sentence, except for capital offenses, including suspension or deferment, as an adult convicted of a felony offense, except that any sentence imposed upon the youthful offender shall be served in the custody or under the supervision of the Office of Juvenile Affairs until the expiration of the sentence, ~~the youthful offender is paroled~~, the youthful offender is discharged, or the youthful offender reaches eighteen (18) years of age, whichever first occurs. If an individual sentenced as a youthful offender attains eighteen (18) years of age prior to the expiration of the sentence, such individual shall be returned to the sentencing court. At that time, the sentencing court shall make one of the following determinations:

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- a. whether the youthful offender shall be returned to the Office of Juvenile Affairs to complete a treatment program, provided that the treatment program shall not exceed the youthful offender's attainment of eighteen (18) years of age and five (5) months. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under subparagraph b, c or d of this paragraph,
- b. whether the youthful offender shall be ~~incarcerated in an institution operated by~~ placed in the custody of the Department of Corrections,
- c. whether the youthful offender shall be placed on probation with the Department of Corrections, or
- d. whether the youthful offender shall be discharged from custody.

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2. The sentence imposed shall not exceed the maximum sentence already imposed in the originating sentence.

3. If a youthful offender has attained eighteen (18) years of age but less than eighteen (18) years of age and five (5) months prior to sentencing, that individual shall be returned to the sentencing court upon attaining the age of eighteen (18) years and five (5) months if that individual has been sentenced to a period of placement or treatment with the Office of Juvenile Affairs. The court shall have the same dispositional options as provided in subparagraphs b, c and d of paragraph 1 of this subsection.

4. Any period of probation required by the sentencing court to be served shall be supervised by:

- a. the Office of Juvenile Affairs or designated representative, if the youthful offender is under eighteen (18) years of age, or

b. the Department of Corrections or designated representative, upon the youthful offender attaining eighteen (18) years of age.

5. In addition to or in lieu of the placement of the youthful offender in the custody of or under the supervision of the Office of Juvenile Affairs, the court may issue orders with regard to the youthful offender as provided by law for the disposition of an adjudicated juvenile delinquent as long as the age of the youthful offender does not exceed eighteen (18) years and five (5) months.

6. It is the intent of the Oklahoma Legislature that youthful offenders be held insofar as is practical separate from the juvenile delinquent population.

7. The Office of Juvenile Affairs may make recommendations to the court concerning the disposition of the youthful offender.

C. A youthful offender who is seventeen (17) or eighteen (18) years of age or older and who has been sentenced to the custody of the Office of Juvenile Affairs may be detained in a county jail pending placement in an Office of Juvenile Affairs facility, provided the county jail meets the jail standards promulgated by the State Department of Health for juvenile offenders. Said youthful offender who is eighteen (18) years of age or older may be held in the general population of the county jail.

10 Okl. St. Ann. § 7306-2.9, OK ST T. 10 § 7306-2.9

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 5-210

~~§ 7306-2.10.~~ **Rehabilitation plan--Annual review hearing--Transfer to Department of Corrections--Time-served credits**

A. Whenever a youthful offender is placed in the custody of or under the supervision of the Office of Juvenile Affairs, the Office shall within thirty (30) days prepare and file with the court a written rehabilitation plan for the youthful offender. The rehabilitation plan shall be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the Office of Juvenile Affairs. The rehabilitation plan shall include, but not be limited to:

1. Clearly stated and measurable objectives which the youthful offender is expected to achieve; and
2. Identification of the specific services and programs that will be provided to the youthful offender by the Office of Juvenile Affairs to assist the youthful offender in achieving the measurable objectives to be reached, including, but not limited to, diagnostic testing consistent with the current standards of medical practice.

B. The court shall schedule an annual review hearing in open court for every youthful offender in the custody of the Office of Juvenile Affairs. Such hearing may be scheduled either upon the court's own motion or upon a motion filed by the Office of Juvenile Affairs. Each annual review hearing shall be scheduled and completed within the thirty-day period immediately preceding the date the sentence was imposed upon the youthful offender. Notice shall be given to the youthful offender, the youthful offender's counsel, parent or guardian, the district attorney, and the Office of Juvenile Affairs at the time the motion for review is made or filed. The court, at its discretion, may schedule other review hearings as the court deems necessary, after notice to the parties. The court shall hold a review hearing for good cause shown, upon any motion filed by the district attorney, the Office of Juvenile Affairs, or the youthful offender for the purpose of making a determination to:

1. Order the youthful offender discharged from the custody of the Office of Juvenile Affairs without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Oklahoma Statutes and dismiss the charge with prejudice to any further action, if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety. If a youthful offender has been discharged without a court judgment of guilt and the charge has been dismissed with prejudice as provided in this paragraph, upon the motion of the youthful offender and the passage of three (3) years after the date of such discharge and dismissal, the court may,

in addition, order any law enforcement agency over which the court has jurisdiction to produce all files and records pertaining to the arrest and conviction of the youthful offender, and shall order the clerk of the court to destroy the entire file and record of the case, including docket sheets, index entries, court records, summonses, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the youthful offender is mentioned. The court may order probation officers and counselors of the Office of Juvenile Affairs to destroy all records, reports, and social and clinical studies relating to the youthful offender that are in the possession of the Office of Juvenile Affairs, except when the documents are necessary to maintain state or federal funding;

2. Revoke an order of probation and place the youthful offender in the custody of the Office of Juvenile Affairs if such offender is less than eighteen (18) years of age;

3. Place the youthful offender on probation under the supervision of the age-appropriate agency;

4. Place the youthful offender if less than eighteen (18) years of age in a sanction program operated or contracted for by the Office of Juvenile Affairs community placement, if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs; or

5. Transfer the youthful offender to the custody or supervision of the Department of Corrections if the court finds by clear and convincing evidence that the youthful offender has:

- a. after certification as a youthful offender, seriously injured or endangered the life or health of another person by such person's violent behavior,
- b. escaped from the facility from which the youthful offender is being held,
- c. committed a felony crime while in the custody or under the supervision of the Office of Juvenile Affairs as shown by a judgment entered following a verdict of guilty, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence,
- d. committed battery or assault and battery on a state employee or contractor of a juvenile facility while in the custody of such facility,
- e. caused disruption in the facility, smuggled contraband into the facility, caused contraband to be smuggled into the facility, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility, or
- f. **has** established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.

The court, in its decision to transfer custody of the youthful offender to the custody of the Department of Corrections, shall detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state.

C. An order transferring custody of a youthful offender to the Department of Corrections shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered. In addition to a judgment and sentence for an adult conviction, the court shall provide to the Department of Corrections a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred to the Department of Corrections, including the date of the offense, the date of the adjudication as a youthful offender, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and the date of the imposition of the adult sentence.

D. The court shall grant time-served credits against the adult sentence imposed for any youthful offender transferred to the Department of Corrections. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the supervision of the Office of Juvenile Affairs, the offender shall receive day-for-day credit for the time spent in the custody or under the supervision of the Office of Juvenile Affairs. Upon commitment to the Department of Corrections, a youthful offender shall also receive other credits as provided by law for an adult inmate.

E. If authorized by the court, review hearings, other than those scheduled for determinations, as provided in subparagraphs 1 through 5 of paragraph B of this section, may be conducted via teleconference communication; provided, the attorney representing the youthful offender shall be present at the hearing. For purposes of this paragraph, teleconference communication means participation by the youthful offender and facility staff in the hearing by interactive telecommunication devices which permit both visual and auditory communication among the necessary participants, the court, and the youthful offender.

10 Okl. St. Ann. § 7306-2.10, OK ST T. 10 § 7306-2.10

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 5-211

§ ~~7306-2.10a~~. Commitment to Department of Corrections--Judgment and sentence

When committing a person who is, or has been, certified as a youthful offender and is certified eligible for the imposition as an adult sentence pursuant to Section 7306-2.8 of this title, or certified as a youthful offender and is being transferred to the Department of Corrections for custody or supervision pursuant to Section 7306-2.10 of this title, or sentenced as an adult after previously being certified as a youthful offender, the judgment and sentence shall clearly identify such person as a youthful offender, or previous youthful offender, and detail the history of the applications of the Youthful Offender Act to such person that resulted in the current commitment to the Department of Corrections.

10 Okl. St. Ann. § 7306-2.10a, OK ST T. 10 § 7306-2.10a

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 5-212

~~§ 7306-2.11. Delinquent or youthful offender in custody of Office of Juvenile Affairs-- Placement options--Office duties and authority--Rights of delinquent or youthful offender~~

A. Whenever a youthful offender is committed to the custody of the Office of Juvenile Affairs, the Office of Juvenile Affairs may:

1. Place the youthful offender in a state training school or other institution or facility maintained by the state for delinquents or youthful offenders;
2. Place the youthful offender in a group home or community residential facility for delinquents or youthful offenders;
3. Place the youthful offender under community supervision prior to or after a period of placement in one or more of the facilities referred to in paragraphs 1 and 2 of this subsection. The Office of Juvenile Affairs may place a youthful offender in his or her own home, or an independent living or other similar living arrangement within the community of the residence of the youthful offender only upon the approval of the court; provided, the court shall not prohibit the reintegration of the youthful offender into the community except upon finding that the youthful offender has not reasonably completed the rehabilitation plan objectives established as preconditions for reintegration into the community or that the public would not be adequately protected if the youthful offender is reintegrated into the community; or
4. Place the youthful offender in a sanction program if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs.

5. Placement of the youthful offender pursuant to this section or any other provision of law shall be the responsibility of the Office of Juvenile Affairs and shall occur as soon as reasonably possible, **and as to placement pursuant to paragraph A(1), but** not more than forty-five (45) days following the filing and adoption of the written rehabilitation plan as provided in Section 7306-2.10 of this title. This placement time period may be extended upon the declaration of an emergency by the **Office Board** of Juvenile Affairs ~~**Board of Directors**~~. For the purposes of this section, "emergency" means any situation that places the health, safety and well-being of the residents or staff in imminent peril. The court shall not have authority to require specific placement of a youthful offender in a time frame which would require the removal of any other juvenile or youthful offender from such placement.

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B. The Office of Juvenile Affairs shall be responsible for the care and control of a youthful offender placed in the custody of the Office of Juvenile Affairs, and shall have the duty and the authority to provide food, clothing, shelter, ordinary medical care, education, discipline and in an emergency to authorize surgery or other extraordinary care. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the youthful offender qualifies for the care under law, rule, regulation or administrative order or decision. Nothing in this section shall abrogate the right of a youthful offender to any benefits provided through public funds nor the parent's statutory duty or responsibility to provide said necessities; further, 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. A youthful offender placed in the custody of the Office of Juvenile Affairs who has attained eighteen (18) years of age or older may authorize and consent to the medical care sought on behalf of the youthful offender by the Office of Juvenile Affairs and to be provided to the youthful offender by a qualified health care professional. No state employee shall be liable for the costs of any medical care or **mental behavioral** health services provided to any child in the custody of the Office of Juvenile Affairs.

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C. A youthful offender in the custody of the Office of Juvenile Affairs shall:

1. Be entitled to the rights afforded juvenile delinquents pertaining to any due process afforded delinquents in regard to movement from a nonsecure to a secure placement; and
2. As appropriate to the age and circumstances of the youthful offender, be provided education, employment, and employment skills and vocational and technical or higher education services, apprenticeship programs and similar opportunities.

D. The Office of Juvenile Affairs shall be permitted to seek appellate review in the Court of Criminal Appeals of any court order pertaining to the care and custody of any youthful offender who is in Office of Juvenile Affairs' custody or under its supervision.

NEW

10 Okl. St. Ann. § 7306-2.11, OK ST T. 10 § 7306-2.11

Current with chapters of the Second Regular Session of the 51st Legislature (2008) effective July 1, 2008.

END OF DOCUMENT

§ 5-213

~~§ 7306-2.12.~~ Pardon by governor--Motion to set aside conviction--Release from penalties, destruction of records

A. Upon the motion of a person who has been convicted and sentenced as a youthful offender and who has been subsequently transferred to the adult system pursuant to Section 7306-2.10 of this title, with the recommendation of the sentencing court, the Governor may grant a full and complete pardon and restore citizenship to any person who has been convicted and sentenced as a youthful offender and who has completed the sentence or been discharged from parole.

B. Upon the motion of a person convicted as a youthful offender, and three (3) years after the expiration of the sentence of the youthful offender, the court may set aside the conviction if:

1. The court has previously found that the person has reasonably complied with the rehabilitation plan and objectives;
2. The person was discharged from supervision by the Office of Juvenile Affairs, or was granted early discharge from such supervision by the court; or
3. The person has completed the sentence imposed as a result of his first conviction as a youthful offender and has no subsequent convictions.

If a conviction is set aside pursuant to this subsection, the youthful offender shall thereafter be released from all penalties and disabilities resulting from the offense for which such person was convicted, including but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. The court may in addition order any law enforcement agency over whom the court has jurisdiction to produce all files and records pertaining to said arrest and conviction of the youthful offender and shall order the clerk of the court to destroy the entire file and record of the case, including docket sheets, index entries, court records, summons, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the youthful offender is mentioned. The court may order probation officers and counselors to destroy all records, reports, and social and clinical studies relating to said youthful offender that are in their possession except when said documents are necessary to maintain state or federal funding.

10 Okl. St. Ann. § 7306-2.12, OK ST T. 10 § 7306-2.12

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

§ 7306-2.13. Repealed by Laws 1997, c. 293, § 43, eff. July 1, 1997

10 Okl. St. Ann. § 7306-2.13, OK ST T. 10 § 7306-2.13

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

PART 3. INCARCERATION AND CONFINEMENT

§ 5-301

§ ~~7306-3.1~~. Educational needs during confinement or incarceration

Any child under eighteen (18) years of age who is a legal resident or the child of legal residents of the State of Oklahoma who is detained, held or arrested for any offense pursuant to any provision of the Juvenile Code or Criminal Code of this state, including such persons subject to adult prosecution, youthful offender proceedings, certification as an adult, reverse certification or juvenile proceedings, shall be identified within seventy-two (72) hours of such detention or arrest for educational needs and shall be afforded such educational opportunities by the State Department of Education without delay while in such facility or jail, including city, county and state jails, holding facilities and juvenile or correctional institutions.

10 Okl. St. Ann. § 7306-3.1, OK ST T. 10 § 7306-3.1

**Current with chapters of the Second Regular Session of the 51st Legislature (2008)
effective July 1, 2008.**

END OF DOCUMENT

ARTICLE VII. 6 -- RECORDS

§ 6-101

~~§ 7307-1.1.~~ Court to keep records--Definitions

A. The court shall make and keep records of all cases brought before the court pursuant to the Oklahoma Juvenile Code, Section 7301-1.1 et seq. of this title. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

All information obtained in discharge of official duty by any officer or other employee of the court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.

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7305-1.3.C

B. As used in the Oklahoma Juvenile Code:

1. "Records" or "record" shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recordings pertaining to a juvenile proceeding or a child, and shall include information entered into and maintained in an automated or computerized information system;

2. "Juvenile court record" means legal and social records other than adoption records, including but not limited to agency, law enforcement and district attorney's records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the Oklahoma Juvenile Code;

3. "Agency record" means records prepared, obtained or maintained by a public or private agency with regard to a child who is or has been under its care, custody or supervision or with regard to a family member or other person living in the home of such child and shall include but not be limited to:

a. any study, plan, recommendation, assessment or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care or treatment of such child, or

b. any records made in the course of any investigation or inquiry conducted by an agency to determine whether a child is a delinquent child or a child in need of supervision;

4. "District attorney's records" means any records prepared or obtained by an office of a district attorney relating to a juvenile case and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child;

5. "Law enforcement records" means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this chapter as a delinquent child or a child in need of supervision. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. "Nondirectory education records" means any records maintained by a public or private school, including a technology center school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to the federal Family Educational Rights and Privacy Act of 1974 and any rules promulgated pursuant to the act;

7. "Legal record" means any petition, docket, motion, finding, order, judgment, pleading, paper or other document, other than social records, filed with the court;

8. "Social record" means ~~social studies and medical, psychological, clinical or other treatment reports or studies, educational records and agency records other than legal records filed with the court~~ all other records and reports considered closed or confidential by law, including but not limited to family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, home studies, and agency records concerning a child or the child's family, excluding records prepared by the agency for the court; and

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9. "Participating agency" means any public or private agency that has entered into a contract or an interagency agreement under the Interlocal Cooperation Act in accordance with the rules and guidelines adopted pursuant to Section 620.6 of this title or the ~~Serious and Habitual~~ Juvenile Offender Tracking Act Program for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth.

NEW
CHANGE

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 6-102

~~§ 7307-1.2. Confidential juvenile records~~

A. Except as provided by this section or as otherwise specifically provided by state or federal laws, the following juvenile records are confidential and shall not be open to the general public, inspected, or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

B. The confidentiality limitation of subsection A of this section shall not apply to statistical information or information of a general nature obtained pursuant to the provisions of the Oklahoma Juvenile Code.

C. The confidentiality requirements of subsection A of this section for juvenile court records and law enforcement records shall not apply:

1. Upon the charging or certification of a juvenile as an adult ~~pursuant to Section 7303-4.3 of this title~~ or youthful offender;

DB will look at this – possible rewrite.

2. Upon the charging of an individual pursuant to Section 7306-1.1 of this title;

~~3. 2.~~ To a violation of any traffic regulation or motor vehicle regulation of Title 47 of the Oklahoma Statutes, or to a violation of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets, or to the operation of self-propelled or nonself-propelled vehicles of any kind in this state;

~~4. To a juvenile who is fourteen (14) years of age or older and who has been adjudicated delinquent and who subsequently comes before the juvenile court on a new delinquency matter after July 1, 1995;~~

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~~5. To a juvenile adjudicated a delinquent for committing a delinquent act which, if committed by an adult, would be a felony offense that is a crime against the person or a felony offense involving a dangerous weapon;~~

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~~6. To arrest records of a juvenile arrested for committing an act, which if committed by an adult, would be a felony offense;~~

~~7. To a violation of the Prevention of Youth Access to Tobacco Act; or~~

8. 3. Whenever a juvenile is accepted for placement or treatment in a facility or private treatment facility within this state as a result of or following a conviction or adjudication for an out-of-state offense that would qualify the juvenile as a youthful offender, as defined in Section 7306-2.2 of this title, had the crime occurred within this state. The facility shall provide any law enforcement agency or peace officer all prior criminal offense, conviction, and adjudication information. If a juvenile flees or is otherwise absent from the facility without permission, the facility shall provide any law enforcement agency or peace officer all prior criminal offense, conviction, and adjudication information. Any law enforcement agency or peace officer shall have the authority to review or copy any records concerning the juvenile, including prior criminal offense, conviction, or adjudication information.

~~D. Following the first adjudication as a delinquent, the court having jurisdiction shall note on the juvenile court record of the person that any subsequent juvenile court records shall not be confidential; provided, the child is at least fourteen (14) years of age or older. Any juvenile court record which becomes an open juvenile record as provided in this subsection may be expunged as provided in Section 7307-1.8 of this title.~~

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~~The provisions of this subsection shall only apply to the juvenile court records and law enforcement records of juvenile offenders certified, charged or adjudicated on and after July 1, 1995.~~

~~E. D.~~ When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the delinquent child whether or not the juvenile record is confidential or open.

~~F. E.~~ Except as otherwise required by state or federal law, the confidential records listed in subsection A of this section may only be inspected, released, disclosed, corrected or expunged pursuant to an order of the court. Except as otherwise provided in Section 601.6 of this title or any provision of this chapter, no subpoena or subpoena duces tecum purporting to compel disclosure of confidential information or any confidential juvenile record shall be valid.

~~G. F.~~ An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of

the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

Except for district attorney records, any court order authorizing the disclosure, release or inspection of a confidential juvenile record may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

H. G. Upon receiving a written request for inspection, release, disclosure, or correction of a juvenile record, the court shall determine whether the record of a juvenile falls under one of the exceptions listed in subsection C of this section. If the record falls under one of the exceptions in subsection C of this section, the court shall issue an order authorizing inspection, release, disclosure or correction of the juvenile record. If the release of a juvenile record is authorized by the court, the Office of Juvenile Affairs shall provide information to the requestor regarding the location of the juvenile record to be released.

I. H. Any agency or person may seek an order from the juvenile court prohibiting the release of confidential information subject to disclosure without an order of the court pursuant to Section 620.6 of this title or any provision of this chapter. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

J. I. In accordance with the provisions of the ~~Serious and Habitual~~ Juvenile Offender Tracking Act Program and Section 620.6 of this title:

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1. Information included in the records listed in subsection A of this section may be entered in and maintained in the Juvenile Justice Information System and other automated information systems related to services to children and youth whether or not the record is confidential or open; and

2. The information systems may be accessed by participating agencies as defined by this chapter or as otherwise provided by law.

K. J. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and shall state specifically the type of information which may be reviewed and reported.

Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of juveniles, parents and other persons as may be required by the court to be confidential will remain confidential.

L. K. Nothing contained in the provisions of Section 620.6 of this title or any provision of this chapter shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;
2. Authorizing the disclosure of information required to be kept confidential by Section 7505-1.1, 7506-1.1 or 7510-1.5 of this title, the Oklahoma Adoption Code or disclosure of any other confidential record pursuant to the provisions of this chapter;
3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;
4. Limiting or otherwise affecting access of parties to a juvenile proceeding to any records filed with or submitted to the court;
5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;
6. Prohibiting the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect; or
7. Prohibiting the person or agency conducting a preliminary inquiry relating to an alleged delinquent act from providing information, as to the disposition of the matter by the district attorney, to the person or agency which referred the matter, including but not limited to whether a petition was filed or an alternative action taken, and the basis for such action and the terms of any agreement entered into by the child for payment of restitution, and including but not limited to provisions for community services.

H.B. 2568
amendments,
effective
7-1-08.

M. L. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled or has been presented for enrollment. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district, the agency in possession of the records shall provide in writing, digitally, or by delivery to a secure facsimile line, the requested information to the school district within five (5) business days upon receipt of the request. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

M. The records of a case for which a petition is not filed shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.
 Current with chapters of the Second Regular Session
 of the 51st Legislature (2008) effective July 1, 2008.

Moved
 from 7303-
 1.3.E

§ 6-102A NEW SECTION

§ ~~7307-1.2.~~ Filing and Release of Social Records

A.

- 1. Social records as defined by § [redacted] of this title shall not be filed in the court record unless so ordered by the court. If filed in the court record, the records shall be placed in confidential envelopes in the court file and may only be accessed by the person, or attorney for such person, who is subject of the record.**
- 2. The parties and their attorneys may obtain a copy of any social record used during the pendency of the delinquent proceedings that has been distributed to the parties during the proceedings.**

B. Nothing in this section shall prohibit the disclosure of confidential records as permitted by the provisions of Article [redacted] of this Code or other applicable law.

§ 6-103

~~§ 7307-1.3. Inspection and disclosure of confidential records without court order~~

A. In accordance with the ~~rules adopted pursuant to the Serious and Habitual Juvenile Offender Tracking Act Program~~ and Section 620.6 of this title, the confidential records listed in subsection A of Section 7307-1.2 of this title may be inspected and their contents disclosed without a court order to:

**NEW
CHANGE**

1. Participating agencies;

2. The following, provided that the inspection of records and disclosure authorized by this paragraph may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure:

- a. pursuant to the provisions of this title, a person, agency, hospital or clinic authorized or directed by the court or by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs to care for, treat, examine, evaluate or supervise a child or to treat, examine or evaluate the parent, legal guardian or other adult person living in the home of the child,
- b. a legally recognized school that is not a participating agency in which the child who is the subject of the record is currently enrolled, and
- c. individuals or agencies engaged in legitimate research for educational, scientific or public purposes or for the purpose of an audit authorized by law. No information identifying the subjects of the records shall be made available or disclosed unless it is essential to the research or audit purpose.

B. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 6-104

~~§ 7307-1.4. Inspection and disclosure of juvenile court records without court order~~

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7307-1.4, as amended by Section 2, Chapter 53, O.S.L. 2005 (10 O.S. Supp. 2006, Section 7307-1.4), is amended to read as follows:

~~Section 7307-1.4. A.~~ Juvenile court records which are confidential may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to lawful duties:

1. The judge having the child currently before the court in any proceeding pursuant to the Oklahoma Juvenile Code, or any judge of the district court or tribal court to which such proceedings may be transferred;
2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court;
3. Members of review boards established pursuant to Sections 1116.2 and 1116.6 of this title. In addition to juvenile court records, any member of such review boards may inspect, without a court order, information including but not limited to:
 - a. psychological and medical records,
 - b. placement history and information, including the names and addresses of foster parents,
 - c. family assessments,
 - d. treatment or service plans, and
 - e. school records;
4. A district attorney and the employees of an office of a district attorney in the course of their official duties;
5. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this chapter. The attorney representing a child or considering representing a child in a juvenile proceeding may also access other records listed in subsection A of Section 7307-1.2 of this title for use in the legal representation of the child;
6. Employees of juvenile bureaus in the course of their official duties;
7. Employees of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs in the course of their official duties;

8. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;

9. The Oklahoma Commission on Children and Youth;

10. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs or other public or private agency or any individual having court-ordered custody or custody pursuant to ~~Department of Juvenile Justice~~ Office of Juvenile Affairs placement of the child who is the subject of the record;

11. The Department of Human Services;

12. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child;

13. Any federally recognized Indian tribe in which the child who is the subject of the record is a member, or is eligible to become a member of the tribe due to the child being the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act; provided such Indian tribe member, in the course of official duties:

a. is investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody, or

b. is providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services;

14. Any federally recognized Indian tribe in which the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes pursuant to the provisions of this subsection shall include all case records, reports and documents as defined in this chapter;

15. The Governor or to any person the Governor designates, in writing;

16. Any federal official of the United States Department of Health and Human Services;

17. Any member of the Legislature, upon the written approval of the Speaker of the House of Representatives or the President Pro Tempore of the Senate;

18. Employees of the Department of Corrections in the course of their official duties;

19. Employees of the United States Probation Office, in the course of their official duties; and

20. Domestic violence and sexual assault advocates employed by a certified domestic violence or sexual assault program pursuant to Section 18p-6 of Title 74 of the Oklahoma Statutes, working within a law enforcement agency or court in the course of their assigned duties.

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

SECTION 10. This act shall become effective November 1, 2007.

Approved May 21, 2007.

OK LEGIS 156 (2007)

END OF DOCUMENT

§ 6-105

~~§ 7307-1.5. Inspection and disclosure of Department of Juvenile Justice Office of Juvenile Affairs' records without court order~~

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7307-1.5, is amended to read as follows:

Section 7307-1.5. A. The Office of Juvenile Affairs agency records pertaining to a child which are confidential may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials:

1. The judge having the child currently before the court in any proceeding pursuant to this title, any judge of the district court or tribal court to which any proceedings may be transferred;
2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and members of review boards established pursuant to the Oklahoma Children's Code;
3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children, including providing summary dispositional and placement information to the victim of the delinquent acts of the child;
4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this title. The attorney representing a child or an attorney considering representing a child in a juvenile proceeding may access other confidential records listed in subsection A of Section 7307-1.2 of this title for use in the legal representation of the child;
5. Employees of juvenile bureaus in the course of their official duties;
6. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or any federally recognized Indian tribe member in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;
7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;

8. The Oklahoma Commission on Children and Youth;

9. The Department of Human Services;

10. Any public or private agency or person authorized by the Office of Juvenile Affairs to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the **Department Office** may limit the disclosure to summaries or to information directly necessary for the purpose of the disclosure;

11. Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;

12. The parents of the child who is the subject of any records;

13. Any person or agency for research purposes, if all of the following conditions are met:

a. the person or agency conducting the research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Office of Juvenile Affairs to conduct the research, and

b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to any documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

14. The Governor or to any person the Governor designates, in writing;

15. Any federal official of the United States Department of Health and Human Services, the United States Social Security Administration, the United States Department of Justice, the United States Department of Homeland Security, or any employee of the United States Probation Office;

16. Any member of the Legislature, upon the written approval of the Speaker of the House of Representatives or the President Pro Tempore of the Senate; and

17. Employees of the Department of Corrections in the course of their official duties.

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

SECTION 4. This act shall become effective November 1, 2007.

Approved May 31, 2007.

OK LEGIS 176 (2007)

END OF DOCUMENT

§ 6-106

~~§ 7307-1.6. Fingerprinting of persons under 18~~

The fingerprinting of persons under eighteen (18) years of age shall be as prescribed by law for the fingerprinting of adults, except as specified by the provisions of this section.

1. When a child is detained or arrested in the course of an investigation of a criminal offense and:
 - a. a comparison of the fingerprints of the child with fingerprints found during the investigation of the offense is negative, or
 - b. a court finds that the child did not commit the alleged offense,

all law enforcement records of the arrest and, if applicable, juvenile court and agency records shall be amended to reflect said facts immediately after the comparison or court finding;

2. Fingerprints obtained pursuant to this section shall be retained in a central state depository and in a local depository maintained by a duly constituted law enforcement agency;
3. Fingerprints obtained and maintained pursuant to this section may be used only by law enforcement officers for comparison purposes in connection with the investigation of a crime or to establish identity in instances of death, serious illness, runaways, or emergency; and
4. If a child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card pursuant to the provisions of the Oklahoma Minor Identification Act, the provisions of the Oklahoma Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian or legal custodian of the child, fingerprints obtained and maintained pursuant to the Oklahoma Minor Identification Act may be used by law enforcement officers as provided by paragraph 3 of this section.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 6-107

~~§ 7307-1.7.~~ **Effect of adjudication--Sealing of records--Order unsealing sealed records-- Destruction of records**

A. 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 a juvenile adjudication.

B. The court may order the records of a person alleged to be delinquent to be sealed as follows:

1. When the person has been alleged to be delinquent and:

a. one (1) year has elapsed from the later of:

(1) dismissal or closure of the case by the court, or

(2) notice to the court by the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs or a juvenile bureau of final discharge of such person from the supervision of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs or juvenile bureau, and

b. the person has not been found guilty of or admitted to the commission of a subsequent criminal offense in either a juvenile or adult proceeding, and

c. no juvenile or adult proceeding for a criminal offense is pending;

2. When a juvenile court intake has been completed and:

a. the case has been dismissed, or

b. no petition has been filed pending fulfillment of conditions of a voluntary probation, or

c. a petition has been filed but no adjudication has occurred pending the fulfillment of conditions of a preadjudicatory probation;

3. When a juvenile participates in a court-approved alternative diversion program for first-time offenders and:

a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and

b. the court dismisses the case at the conclusion of the deferral period; or

4. When a juvenile participates in a court-approved military mentor program and:

- a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and
- b. the court dismisses the case at the conclusion of the deferral period.

The records may be sealed one (1) year after such dismissal or completion of the conditions of a voluntary or preadjudicatory probation, alternative diversion program for first-time offenders, or military mentor program or upon the person attaining the age of eighteen (18) years in the discretion of the court.

C. The Administrative Office of the Courts shall establish on or before January 1, 1994, a system for sealing records as required by subsection B of this section and records shall be sealed in accordance with the procedures established pursuant to said system.

D. Upon the sealing of any record of a person alleged to be delinquent pursuant to this title, the record and official actions subject to the order shall be deemed never to have occurred, and the person who is the subject of the record and all juvenile justice agencies may properly reply upon any inquiry in the matter that no such action ever occurred and no such record exists with respect to such person.

E. 1. Upon the entry of an order to seal a juvenile court record, the court clerk shall seal the juvenile court record indicated in the court's order, except that a confidential index shall be maintained for the purpose of locating records subject to inspection or release pursuant to subsection G of this section.

2. When notified by the court clerk of a court order sealing a juvenile court record, the law enforcement agency having records pertaining to the person shall seal the records as ordered, except basic identification information shall be maintained.

3. Except where such documents are necessary to maintain state or federal funding, the juvenile court personnel records pertaining to the person shall be sealed.

F. Members of the judiciary, district attorneys, the defendant, the defendant's counsel and employees of juvenile bureaus, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs assigned juvenile court intake responsibilities, and the Department of Corrections may access records that have been sealed pursuant to this section without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition, or for purposes of sentencing or placement in a case where the person who is the subject of the sealed record is alleged to have committed a subsequent juvenile delinquent act or any adult criminal offense. Provided, any record sealed pursuant to this section may be used in a subsequent juvenile delinquent or adult prosecution only after the issuance of a court order unsealing the record.

G. The court may issue an order unsealing sealed juvenile court records, for use for the following purposes:

1. In subsequent cases against the same child pursuant to this title;
2. In an adult criminal proceeding pursuant to Section 7303-4.3 or 7306- 1.1 of this title;
3. Upon conviction of a criminal offense in an adult proceeding, in connection with the sentencing of such person;
4. If the person is placed in the custody or under the supervision of the Department of Corrections;
5. In accordance with the guidelines adopted pursuant to the ~~Serious and Habitual~~ Juvenile Offender Tracking Act Program and Section 620.6 of this title, for maintaining juvenile justice and criminal justice statistical information;
6. For the purpose of a criminal investigation; or
7. When the court finds that there is a compelling reason and it is in the interest of justice to order the record unsealed.

**NEW
CHANGE**

H. Any person or agency having a legitimate interest in a delinquency case or proceeding may petition the court for an order unsealing a juvenile court record. Upon the filing of a petition to unseal any juvenile court record, the court shall set a date for a hearing and shall provide thirty (30) days' notice to all interested parties. The hearing may be closed at the court's discretion. If, after a hearing, the court determines that there is any reason enumerated in subsection G of this section and it is necessary for the protection of a legitimate public or private interest to unseal the records, the court shall order the record unsealed.

I. Any record ordered to be sealed pursuant to this section, if not unsealed within ten (10) years of the order, shall be obliterated or destroyed at the end of the ten-year period.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 6-108

§ ~~7307-1.8~~. Expungement of open juvenile court record

A. A person who is the subject of an ~~open~~-juvenile court record **that is not confidential as provided by law** may petition the district court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to the person, except basic identification information; provided:

NEW

1. The person has attained twenty-one (21) years of age or older;
2. The person has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person at the time of the petition for an expungement;
3. The person has not been subject to any deferred prosecution or deferred sentence, and has not been convicted of any criminal offense; and
4. All court costs, restitution, fines and other court-ordered requirements have been completed for all juvenile proceedings.

B. Upon the filing of a petition for expungement of a juvenile court record, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall provide a thirty (30) days' notice of the hearing to the district attorney, the ~~Department of Juvenile Justice~~ **Office of Juvenile Affairs**, the Oklahoma State Bureau of Investigation, and any other person or agency whom the court has reason to believe may have relevant information related to the expungement of any record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order the records, or any part thereof except basic identification information, to be expunged. If the court finds that neither expungement of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to the records. Any order entered pursuant to the provisions of this subsection shall specify those agencies to which the court order shall apply.

D. Upon the entry of an order to expunge any juvenile court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all juvenile and criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the person.

E. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of the records, the Attorney General, or by the district attorney and only to those persons and for such purposes named in the petition.

F. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in any expunged juvenile records. An applicant need not, in answer to any question concerning arrest, juvenile and criminal records, provide information that has been expunged, including any reference to or information concerning expungement and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose information that has been expunged.

G. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

H. For the purposes of this section, expunged materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

I. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

J. Any record ordered to be expunged pursuant to this section shall be sealed and, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

K. Subsequent to records being sealed as provided herein, the district attorney, the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing any records. Upon filing of a petition, the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

L. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

M. A person who has attained eighteen (18) years of age or older may petition the district or municipal court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to matters involving truancy provided the person has met the criteria set forth in paragraphs 2 through 4 of subsection A of this section. The petition shall be reviewed by the district or municipal judge with primary responsibility over the juvenile court docket.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 6-109

~~§ 7307-1.9.~~ Procedures for providing certain records to sheriffs-- Confidentiality

The Office of Juvenile Affairs shall, in cooperation with sheriffs in this state, develop procedures for providing timely and relevant information to sheriffs concerning juvenile court records and agency records of persons who have met the criteria specified in paragraph 5 of subsection C of Section 7307-1.2 of Title 10 of the Oklahoma Statutes. The procedures shall be designed to provide the type of information useful and relevant to establishing security level requirements for persons in the custody of a sheriff. The provisions of this section shall not require the disclosure of any records or information which is required by law to be kept confidential.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE ~~VIII~~. 8 -- JUVENILE SEX OFFENDER REGISTRATION ACT

§ 8-101

§ ~~7308-1.1~~. Short title

This act shall be known and may be cited as the "Juvenile Sex Offender Registration Act".

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-102

§ ~~7308-1.2~~. Juvenile sex offender defined

As used in this act, "juvenile sex offender" means a person who was not less than fourteen (14) years of age but who was less than eighteen (18) years of age at the time the qualifying sex offense was committed and who:

1. On or after July 1, 2001, was adjudicated delinquent or a youthful offender for an action that would be an offense provided in Section 888, 1111, 1111.1, 1114 or 1115 of Title 21 of the Oklahoma Statutes, if committed by an adult;
2. As of July 1, 2001, is serving formal probation or commitment to the custody of the Office of Juvenile Affairs as the result of adjudication for an action that would be an offense provided in Section 888, 1111, 1111.1, 1114 or 1115 of Title 21 of the Oklahoma Statutes, if committed by an adult;
3. Was adjudicated delinquent in another state for an action that is substantially equivalent to an offense provided in Section 888, 1111, 1111. 1, 1114 or 1115 of Title 21 of the Oklahoma Statutes, and is subject on or after July 1, 2001, to court jurisdiction in this state pursuant to the Interstate Compact on Juveniles; or
4. Is required to register as a juvenile sex offender in another state for having committed a sex offense in that state regardless of the date of the offense or its adjudication.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-103

§ ~~7308-1.3~~. Juvenile sex offender registry--Information included

The Office of Juvenile Affairs shall establish and maintain a registry for juvenile sex offenders required by the court to register. The registry shall include fingerprints, photographs, and information collected from forms submitted and other communications relating to notice of duty to register, sex offender registration, and notice of change of name or address. Information in the juvenile sex offender registry is subject to release to law enforcement agencies and may be released to the public pursuant to court order as provided in Section 7308-1.4 of this title.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-104

~~§ 7308-1.4.~~ Application register--Criteria for qualifying--Court order

A. When a person meets the definition of a juvenile sex offender pursuant to Section 7308-1.2 of this title, the district attorney may make an application to include the juvenile in the juvenile sex offender registry. Upon the application of the district attorney, the court shall appoint two persons who are qualified sex offender treatment professionals to evaluate the juvenile and report to the court on the treatment prognosis and likelihood that the juvenile offender represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. One appointee shall be currently licensed as a physician or psychologist in Oklahoma with a minimum of two hundred (200) hours of clinical experience in juvenile sex offender treatment. Other criteria for qualifying as a sex offender treatment professional shall include, but not be limited to, current licensure as a medical or mental health professional with a minimum of two hundred (200) hours of clinical experience in juvenile sex offender treatment, or current licensure as a medical or mental health professional with a minimum of two (2) years' combined clinical experience in child abuse treatment, child or adolescent anger management treatment, juvenile delinquency or criminal behavior treatment, sexual abuse treatment, child or adolescent psychology, or therapeutic social work. A list of sex offender treatment professionals meeting the established criteria shall be provided to each district court by the Office of Juvenile Affairs. Where professionals are appointed to conduct an evaluation in such cases, the court may set reasonable compensation and order the payment out of the court fund. In the event two qualified sex offender treatment professionals are not available to the court to evaluate the juvenile sex offender, the Office of Juvenile Affairs may, at the court's request, select additional qualified sex offender treatment professionals employed by the agency to assist with the evaluation report.

B. The court shall, after consideration of the evaluation report required by subsection A of this section, make a finding of whether the juvenile offender represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. If the court finds the juvenile represents such threat, the court shall order the juvenile to register on the juvenile sex offender registry as provided in this act.

C. The court, in its discretion, may order information on any juvenile sex offender released from the juvenile sex offender registry to any person or to the public at large when the evaluation report considered by the court indicates a likelihood of an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. If the court orders release of this information to the public at large, it shall promptly be made available for public inspection or copying pursuant to rules promulgated by the Office of Juvenile Affairs. If the court orders the release of this information through community notification, the notification shall be carried out by the local law enforcement authority applicable to the person's residence.

D. The court may review the treatment prognosis of any registered juvenile sex offender at any time and may, in its discretion, order release of additional information from the juvenile sex offender registry, as deemed appropriate for the protection of the public.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-105

~~§ 7308-1.5. Juvenile sex offenders ordered to probation--Notification of duty to register~~

On and after the effective date of this act, when the court orders a juvenile sex offender to register on the juvenile sex offender registry as provided in Section 7308-1.4 of this title, the court shall provide at the time of the order written notification of the duty to register. The written notification shall be a form provided by the Office of Juvenile Affairs and shall be signed by the juvenile and a parent or guardian who has custody and control of the juvenile. One copy shall be retained by the court, one copy shall be provided to the juvenile offender, and one copy shall be submitted within three (3) working days to the juvenile sex offender registry.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-106

§ ~~7308-1.7~~. Annual registration--Notification of change of name and address

An adjudicated juvenile sex offender ordered to register on the juvenile sex offender registry shall be subject to annual registration and change of name and address notification pursuant to this act, except during periods when the juvenile is in the custody of the Office of Juvenile Affairs.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-107

§ 7308-1.8. Failure to register or provide notification of change of name or address

A. A juvenile sex offender who fails to register or provide notification of a change of name or address is guilty of a misdemeanor.

B. A parent or guardian who has custody and control of a juvenile sex offender commits a misdemeanor offense of failure to supervise a child if the juvenile offender fails to register or provide notification of a change of name or address as required by this act. A person convicted of this offense is punishable by a fine of not more than One Thousand Dollars (\$1,000.00).

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-108

~~§ 7308-1.9.~~ Transfer of registration to adult sex offender registry-- Petition

When a registered juvenile sex offender reaches twenty-one (21) years of age or is otherwise released from the custody of the Office of Juvenile Affairs, the district attorney may petition the court to transfer the person's registration to the adult sex offender registry maintained by the Department of Corrections, subject to the provisions of Section 581 et seq. of Title 57 of the Oklahoma Statutes. After notice, if the court determines at a hearing that the person who is registered on the juvenile sex offender registry is likely to or does pose an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age, the court shall order that the delinquent act be deemed an adult criminal conviction for the purpose of registration, notification, and public information access pursuant to Section 581 et seq. of Title 57 of the Oklahoma Statutes. If no petition is filed within ninety (90) days following the twenty-first birthday of the person or the date of release from custody, or if the court determines the person is not likely to or does not pose an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age, the juvenile's name and information shall be deleted from the juvenile sex offender registry, and the person may not be included in the adult sex offender registry.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-109

~~§ 7308-1.10. Juveniles not subject to act~~

The provisions of this act do not apply to a juvenile who is subject to registration and notification requirements of Section 581 et seq. of Title 57 of the Oklahoma Statutes, because the offender was convicted of a sex offense as an adult.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-110

~~§ 7308-1.11. Disclosure of information--Immunity from liability~~

A. No person or governmental entity, other than those specifically charged in this act with a duty to collect information regarding registered sex offenders, has a duty to inquire, investigate or disclose any information regarding registered sex offenders.

B. No person or governmental entity, other than those specifically charged in this act with an affirmative duty to provide public access to information regarding registered sex offenders, shall be held liable for any failure to disclose any information regarding registered sex offenders to any other person or entity.

C. Every person or governmental entity who, acting without malice or criminal intent, obtains or disseminates information under this act shall be immune from civil liability for any damages claimed as a result of such disclosures made or received.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-111

§ ~~7308-1.12~~. Use of information to commit crime or cause physical harm or damage to property--Penalties

Any person who uses information obtained pursuant to this act to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor upon conviction, and, in addition to any other punishment, shall be punished by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 8-112

~~§ 7308-1.13.~~ Rules, procedures, and forms

The Office of Juvenile Affairs shall promulgate rules, procedures, and forms necessary for the implementation of a juvenile sex offender registry.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

ARTICLE ~~IX~~. 9 -- INTERSTATE COMPACT FOR JUVENILES ACT

§ 9-101

~~§ 7309-1.1~~. Short title

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-102

§ ~~7309-1.2~~. Purpose

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE

A. The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

B. It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

1. Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
3. Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
4. Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
5. Provide for the effective tracking and supervision of juveniles;
6. Equitably allocate the costs, benefits and obligations of the compacting states;
7. Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

8. Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
9. Establish procedures to resolve pending charges detainers against juvenile offenders prior to transfer or release to the community under the terms of this compact;
10. Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
11. Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
12. Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
13. Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact.

The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-103

§ ~~7309-1.3~~. Definitions

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct;
2. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact;
3. "Compacting state" means any state which has enacted the enabling legislation for this compact;
4. "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;
5. "Court" means any court having jurisdiction over delinquent, neglected, or dependent children;
6. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact;
7. "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact;
8. "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:
 - a. "accused delinquent" means a person charged with an offense that, if committed by an adult, would be a criminal offense,
 - b. "adjudicated delinquent" means a person found to have committed an offense that, if committed by an adult, would be a criminal offense,

- c. "accused status offender" means a person charged with an offense that would not be a criminal offense if committed by an adult,
- d. "adjudicated status offender" means a person found to have committed an offense that would not be a criminal offense if committed by an adult, and
- e. "non-offender" means a person in need of supervision who has not been accused or adjudicated a status offender or delinquent;

9. "Noncompacting state" means any state which has not enacted the enabling legislation for this compact;

10. "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states;

11. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule; and

12. "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-104

§ ~~7309-1.4~~. Interstate Commission for Juveniles

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the "Interstate Commission for Juveniles". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the Interstate Commission.

D. Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include Interstate Commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking

and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-105

~~§ 7309-1.5.~~ Interstate Commission--Powers and duties

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states;
2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission;
4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
5. To establish and maintain offices which shall be located within one or more of the compacting states;
6. To purchase and maintain insurance and bonds;
7. To borrow, accept, hire or contract for services of personnel;
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;
9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;
13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
14. To sue and be sued;
15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission;
16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;
18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity;
19. To establish uniform standards of the reporting, collecting and exchanging of data; and
20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-106

~~§ 7309-1.6. Interstate Commission--Organization and operation~~

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. Bylaws.

The Interstate Commission shall, by a majority of the members present and voting, within twelve (12) months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- a. establishing the fiscal year of the Interstate Commission,
- b. establishing an executive committee and such other committees as may be necessary,
- c. provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission,
- d. providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting,
- e. establishing the titles and responsibilities of the officers of the Interstate Commission,
- f. providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations,
- g. providing "start-up" rules for initial administration of the compact, and
- h. establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and staff.

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice-chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate

Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

C. Qualified immunity, defense and indemnification.

1. The Interstate Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-107

§ ~~7309-1.7~~. Interstate Commission--Rulemaking

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act", 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule;
2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

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of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-108

~~§ 7309-1.8.~~ **Interstate Commission--Oversight, enforcement and dispute resolution**

ARTICLE VII

OVERSIGHT, ENFORCEMENT AND DISPUTE

RESOLUTION BY THE INTERSTATE COMMISSION

A. Oversight.

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

B. Dispute resolution.

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-109

~~§ 7309-1.9. Finance~~

ARTICLE VIII

FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

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of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-110

~~§ 7309-1.10. State Council~~

ARTICLE IX

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

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of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-111

~~§ 7309-1.11. Compacting states--Effective date--Amendment~~

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-112

~~§ 7309-1.12. Withdrawal--Default--Termination--Judicial enforcement~~

ARTICLE XI

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Technical assistance, fines, suspension, termination and default.

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. remedial training and technical assistance as directed by the Interstate Commission,

b. alternative dispute resolution,

c. fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission, and

d. suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in Interstate Commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty (60) days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

C. Judicial enforcement.

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

D. Dissolution of compact.

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.
2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-113

~~§ 7309-1.13.~~ Severability and construction

ARTICLE XII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT

§ 9-114

~~§ 7309-1.14. Binding effect--Other laws~~

ARTICLE XIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other laws.

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of compact.

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.
2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.
3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.
4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

**Current with chapters of the First Regular Session
of the 51st Legislature (2007) effective July 31, 2007.**

END OF DOCUMENT