

Title 45

Children and Juveniles

Choctaw Nation Children and Juvenile Code

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Editor's Notes

This code, adopted in Council Bill 144-18 and effective August 15, 2018, replaces the previous

Children's Code adopted in Council Bill 25-13, enacted November 13, 2012. Additional amendments are shown in the "History" following the amended section.

CHAPTER I. GENERAL PROVISIONS AND DEFINITIONS

Section 1-1-101. Short Title—Contents of the Code—Effect of Captions

A. Sections 1-1-101 through 1-9-122 of this Title shall be known and may be cited as the "Choctaw Nation Children's Code."

B. All statutes hereinafter enacted and codified in this Title shall be considered and deemed part of the Choctaw Nation Children's Code.

C. Articles, chapters, and part captions are part of the Choctaw Nation 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 chapter or part of this Code.

D. The provisions of this Article 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 Choctaw Nation Adoption Code.

History
CB-144-18, eff. Aug. 15, 2018

Section 1-1-102. Legislative Intent and Purpose

A. 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 federal and tribal laws. To that end, it is presumed that the best interests of a child 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 or neglect or threat of harm;

1. A child has a right to be raised by the mother and father of the child 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; and

2. Because the tribe has an interest in its present and future citizens as well as a duty to protect those who, because of age, are unable to protect themselves, it is the policy of the Choctaw Nation of Oklahoma 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 the safety of a child, the tribe's interest in the welfare of the child 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 the best interests of the child are met.

B. It is the intent of the Tribal Council that the Choctaw Nation Children's Code provide

the foundation and process for tribal intervention into the parent-child relationship whenever the circumstances of a family threaten the safety of a child and to properly balance the interests of the parties stated herein. 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 family ties of the child 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 return the child to the home unless otherwise prescribed by the Choctaw Nation 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, the child will be placed in an adoptive home or other permanent living arrangement in a timely fashion; and
8. Secure for each child the permanency, care, education, and guidance as will best serve the spiritual, emotional, cultural, 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 Choctaw Nation Children's Code, it is the intent of the Tribal Council that:

1. Each child shall be assured the care, guidance, and supervision in a permanent home or foster home that will serve the best interests of the child including, but not limited to, the development of the moral, emotional, cultural, spiritual, mental, social, educational, and physical well-being of the child;
2. When a child is placed in foster care, the foster parent may consider the child as part of the family;
3. Whenever possible siblings shall be placed together and when it is not possible, efforts shall be made to preserve the relationships through visitation and other methods of communication; and
4. Permanent placement is achieved as soon as possible.

D. A foster parent shall be considered an essential participant with regard to decisions related to the care, supervision, guidance, rearing, and other foster care services to the child.

E. It is the intent of the Tribal Council that the paramount consideration in all proceedings within the Choctaw Nation Children's Code is the best interests of the child.

F. None of the provisions contained within the Choctaw Nation Children's code shall be deemed to alter the application and/or implementation of the federal Indian Child Welfare Act¹, or any of its state counterparts, in proceedings in state courts.

G. It is the intent of the Tribal Council that the Choctaw Nation's placement preferences befollowed in any adoptive placements or foster care or pre-adoptive placements as follows:

1. Adoptive placements preference shall be given, in absence of good cause to the contrary, to placement with:

- a. a biological parent;
- b. a member of the child's extended family;
- c. other members of the child's tribe; or
- d. members of another tribe; and

2. A child accepted for foster care or pre-adoptive placement shall be placed in reasonable proximity to the child's home, in the least restrictive family-like setting that can provide for the child's needs. In any such placement, a preference shall be given, absent good cause to the contrary, to:

- a. a biological parent;
- b. a member of the child's extended family;
- c. a foster home licensed by the Choctaw Nation;
- d. a foster home licensed or approved by another Indian Tribe; (e) an Indian fosterhome licensed or approved by a non-Indian licensing authority.

H. Nothing in this Code shall be construed to provide any rights to any foster parent or other party that have not been licensed by the Choctaw Nation Children and Family Services Foster Care Unit and recognized by the Choctaw Nation District Court as a party to the cause or action.

I. State child custody orders involving Choctaw Nation children may be recognized by the Court only after a full independent review of such state Court proceeding has determined:

1. The state court had jurisdiction over the Choctaw child;
2. The provisions of the Indian Child Welfare Act, 25 U.S.C. §1901 et seq., were

properly followed;

3. Due process was provided to all interest persons participating in the state proceeding; and

4. The state court proceeding did not violate the public policies, customs, or common law of the Choctaw Nation.

5. Due to the vital interest of the Choctaw Nation in its children and those children who may become members of the Choctaw Nation, the statutes, regulations, public policies, customs and common law of the Choctaw Nation shall control in any proceeding in tribal court involving a Choctaw child.

¹ 25 U.S.C. §1901, et seq.

History

CB-114-18, eff. Aug. 15, 2018; CB-91-22, eff. Jan. 12, 2022.

Section 1-1-103. Jurisdiction—Transfers to and from other Courts

A. Except as otherwise provided by law, the courts of the Choctaw Nation shall have exclusive jurisdiction over Indian children domiciled in Indian Country within the Choctaw Nation of Oklahoma in proceedings provided for in this Title unless such jurisdiction is otherwise vested in a state or federal court by operation of federal law. In such an instance, the Choctaw Nation will have concurrent jurisdiction. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. The court will have concurrent jurisdiction over proceedings involving an Indian child who does not reside and is not domiciled within Indian Country in the Choctaw Nation:

1. concerning any child in need of supervision;
2. concerning any child who is delinquent, neglected, or dependent;
3. concerning any transfer proceeding to or from a court of another sovereign in a children's case;
4. to determine the legal custody of any child, or to appoint a guardian of the person, or legal custodian of any child who comes within the jurisdiction of the Choctaw Nation;
5. for the issuance of orders of support of children;
6. to determine the parentage of a child, and to make an order of support in connection therewith;
7. for the adoption of a person of any age;
8. for judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law; and

9. for the treatment or commitment of a mentally ill or developmentally disabled child who comes within the jurisdiction of the Choctaw Nation; but

10. not in proceedings between only the legal and/or biological parents of a child concerning custody.

B. For purpose of the transfer hearing, only the Choctaw Nation represented through the office of the Tribal Prosecutor, and parents of the child shall be entitled to present evidence.

C. The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

D. Nothing in this section shall deprive the court of jurisdiction to appoint a guardian for a child or of jurisdiction to determine the legal custody of a child upon a writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the court.

E. Where a custody award has been made in the court in a dissolution of marriage action or another proceeding, the court may take jurisdiction in a case involving the same child if he or she is or is alleged to be dependent or neglected, or otherwise comes within the jurisdiction set forth herein.

F. Pursuant to the Indian Child Welfare Act¹, 25 U.S.C. § 1911 B.², any state court shall transfer to the District Court of the Choctaw Nation any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in the Choctaw Nation, absent good cause to the contrary or an objection by either parent. These provisions shall also apply to transfers from other tribal courts where an Indian child is a member of or eligible for membership in the Choctaw Nation. Such transfers shall be subject to the Choctaw Nation's right to declination.

G. The court shall determine whether the transfer to the jurisdiction of the Choctaw Nation would be detrimental to the best interests of the child in a transfer hearing initiated by the Choctaw Nation after the order of transfer is received by the court clerk. In making such determination, the court may consider:

1. whether the child, or the family of the child, will be in need of special services for physical or mental disease or defect, which the tribe and its resources are unable to adequately provide;

2. if transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the court should decline to accept the transfer until after the adjudication is complete; and

3. any other matters which may adversely affect the ability of the Choctaw Nation to provide treatment or necessary services to the family.

H. A court transferring a case to the jurisdiction of the Choctaw Nation under subsection A of this section shall transmit all documents and legal and social records, or certified copies thereof,

to the district court, which shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in the Choctaw Nation. Transfer cases shall be assigned a court case number as in other cases.

I. The courts of the Choctaw Nation are authorized to transfer any case involving a child arising in the Choctaw Nation to the courts of the child's Indian tribe when said child is not a member or eligible for membership in the Choctaw Nation, or to the courts of the state where the child is a resident or is domiciled if the child is a non-Indian, upon the petition of the prosecutor, either parent of the child, a custodian, or guardian of the child, the child's tribe, or an appropriate official of the state where the child resides or is domiciled.

J. In making such transfers the court must consider:

1. the best interests of the child;
2. any special needs or mental or physical diseases or defects of the child and of his or her family, and the ability of the receiving jurisdiction to meet those needs;
3. if transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;
4. emotional, cultural, and social ties of the child and his or her family; and
5. the likelihood that the child and his or her family would return to the Choctaw Nation within a reasonable time and come before the court again.

K. Upon entering an order transferring a case as provided in this section, the court shall serve a certified copy of the order of transfer, the legal case file, and any social or police reports concerning the child's case to the court clerk of the receiving jurisdiction by certified mail, return receipt requested. The court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

¹ 25 U.S.C. §1901, et seq.

² Probably refers to Subsection (b)

History

CB-114-18, eff. Aug. 15, 2018; CB-91-22, eff. Jan 12, 2022.

Section 1-1-104. Enforcement Authority

The prosecutor 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 Choctaw Nation Children's Code, or to enforce any of the laws of the Choctaw Nation of Oklahoma 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-1-105. Definitions

When used in the Choctaw Nation Children's Code, unless the context otherwise requires:

1. "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;

2. "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to, non-accidental physical or mental injury, sexual abuse, or sexual exploitation. 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.

a. "Harm or threatened harm to the health or safety of a child" 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.

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 health, safety, or welfare of the child.

c. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by any person eighteen (18) years of age or older or by a person responsible for the health, safety, or welfare of a child, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child;

3. "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;

4. "Adjudicatory hearing" means a hearing by the court as provided by Section 1-4-601 of this Title;

5. "Age of majority" means a child has reached eighteen (18) years from the date of its birth;

6. "Age or developmentally-appropriate" means:

- a. activities or items that are generally accepted for children of the same chronological

age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

b. in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

7. “Assessment” means the same as the term “safety analysis” as defined in this Section;

8. “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;

9. “Child” means any unmarried person under eighteen (18) years of age;

10. “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;

11. “Child care institution” means a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the Department that meets the standards established for such licensing except, in the case of a child who has attained eighteen years of age, the term includes a supervised setting in which the individual is living independently; however, this definition does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

12. “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;

13. “Child-placing agency” means an agency or entity that arranges for or places a child in a foster family home, group home, or successful adulthood program.

14. “Commission” means the Department of Children and Family Services;

15. “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;

16. “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;

17. “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 when appointed by the court, serves as an officer of the court in the capacity as a guardian ad litem;

18. “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;

19. “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 Choctaw Nation Department of Children and Family Services;

20. “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;

21. “Department” means the Choctaw Nation Department of Children and Family Services, the agency designated to administer and/or supervise guardianships, foster care, and adoption processes on behalf of the Choctaw Nation of Oklahoma;

22. “Dependent child” means a child who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent.

23. “Deprived child” means a child:

a. whose parent, legal guardian or custodian has subjected the child to abuse or neglect, or whose parent, legal guardian or custodian has enabled or allowed another to subject the child to abuse or neglect without taking lawful means to stop such abuse or neglect or prevent it from recurring,

b. who is for any reason homeless, or abandoned,

c. who does not have the proper parental care or guardianship,

d. who has been abused, neglected, or is dependent,

e. whose home is an unfit place for the child by reason of depravity on the part of the parent or legal guardian of the child, or other person responsible for the health or welfare of the child,

f. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child, who is a child with a disability deprived of 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,

g. who, due to improper parental care and guardianship, is absent from school, if the child is subject to compulsory school attendance,

h. whose parent, legal guardian or custodian for good cause desires to be relieved of custody,

i. 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

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

k. whose parent, legal guardian or custodian has failed to protect the child from exposure to any of the following:

- (1) use, possession, sale or manufacturing of illegal drugs;
- (2) illegal activities; or
- (3) sexual acts or materials that are not age-appropriate.

Nothing in the Choctaw Nation 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.

24. "Dispositional hearing" means a hearing by the court as provided by Section 1-4-706 of

this Title;

25. “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 1-4-201 of this Title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 1-4-203 of this Title;

26. “Extended family member” means a person at least eighteen years of age and who is related to the child by either blood or marriage and is the child’s grandparent, aunt or uncle, brother or sister, niece or nephew, or cousin. This may extend beyond first-degree relatives and may include traditional custodians.

27. “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;

28. “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;

29. “Foster care maintenance payments” means the financial assistance provided by the Choctaw Nation of Oklahoma to reimburse, compensate, and provide for the cost of associated with caring for a child in foster care, including food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, reasonable travel to the child's home for visitation with family or other caretakers, reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement, local travel associated with providing the items listed above, and (in the case of child care institutions) the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described above.

30. “Foster family home” means the home of an individual or family licensed or approved as meeting the standards established by the Department that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes, or other facilities licensed or approved for the purpose of providing foster care by the Department responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed.

31. “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 Children and Family Services or any child-placing agency;

32. “Guardianship” means a judicially created relationship between the child and relative that is intended to be permanent and self-sustaining as evidenced by the transfer to the relative of the following parental rights with respect to the child:

- a. protection;
- b. education;
- c. care and control of the person;
- d. custody of the person; and
- e. decision making.

33. “Guardian ad litem” means a person appointed by the court pursuant to the provisions of Section 1-4-306 of this Title having those duties and responsibilities as set forth in that section. The term “guardian ad litem” shall refer to a court-appointed special advocate as well as to any other person appointed pursuant to the provisions of Section 1-4-306 of this Title to serve as a guardian ad litem;

34. “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 1-8-109 of this Title;

35. “Group home” means a residential facility licensed by the Department to provide full-time care and community-based services for more than five but fewer than thirteen children;

36. “Harm or threatened harm to the health or safety of a child” 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;

37. “Heinous and shocking abuse” includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. “Serious bodily injury” means injury that involves:

- a. a substantial risk of death,
- b. extreme physical pain,
- c. protracted disfigurement,
- d. a loss or impairment of the function of a body member, organ, or mental
- e. an injury to an internal or external organ or the body,
- f. a bone fracture,
- 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 in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time 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.

38. “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 met or sustained 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 a failure to thrive,

c. an act or failure to act by a parent that results in the death or near death of a child or 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;

39. “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;

40. “Individualized service plan” means a document written pursuant to Section 1-4-704 of this Title that has the same meaning as “service plan” or “treatment plan” where those terms are used in the Choctaw Nation Children’s Code;

41. “Infant” means a child who is twelve (12) months of age or younger;

42. “Institution” means a residential facility offering care and treatment for more than twenty residents;

43. “Investigation” means the same as the term “safety analysis” as defined in this section;

44. “Kinship care” means full-time care of a child by a kinship relation;

45. “Kinship guardianship” means a child placed in the guardianship of a kinship relation;

46. “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;

47. “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;

48. “Minor” means the same as the term “child” as defined in this section;

49. “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;

50. “Multidisciplinary child abuse team” means any team established pursuant to Section 1-9-102 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;

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

52. “Neglect” means any of the following:

- a. the failure or omission to provide any of the following:
 - (1) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,
 - (2) medical, dental, or behavioral health care,
 - (3) supervision or appropriate caretakers, or
 - (4) 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:
 - (1) the use, possession, sale, or manufacture of illegal drugs,
 - (2) illegal activities, or
 - (3) sexual acts or materials that are not age-appropriate, and
- c. abandonment.

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

53. "Permanency hearing" means a hearing by the court pursuant to Section 1-4-811 of this title;

54. "Permanent custody" means the court-ordered custody of an adjudicated deprived child when a parent-child relationship no longer exists due to termination of parental rights or due to the death of a parent or parents;

55. "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 1-4-709 of this title;

56. "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; or an owner, operator, or employee of a child care facility;

57. "Planned permanent living arrangement" means a case plan for children in out-of-home care for whom there is no goal for prospective long-term placement with a legal, permanent family.

58. "Protective custody" means custody of a child taken by a law enforcement officer or designated employee of the court without a court order;

59. "Putative father" means an alleged father;

60. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the Department to participate in extracurricular, enrichment, cultural, and social activities. In this context, 'caregiver' means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

61. "Relative" means a person who is related to the child by either blood or marriage and is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, cousin.

62. "Removal" means the intervention by agents or officers of the Choctaw Nation of Oklahoma to extract a child from their parent, guardian, or custodian to ensure the health, safety, and welfare of the child pursuant to either a court order or voluntary foster care placement; a child shall be considered constructively removed from the date of the first court order sanctioning removal of the child; but a child that remains in the care of their parent, guardian, or custodian

under the supervision of the Department is not considered removed.

63. “Residential child care facility” means a twenty-four hour residential facility where children live together with, or are supervised by, adults who are not their parents or relatives;

64. “Review hearing” means a hearing by the court pursuant to Section 1-4-807 of this Title;

65. “Safety 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.

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 the health or safety of a child which, following a risk analysis, results in one of the following findings:

(1) “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 health, safety, or welfare of the child is threatened,

(2) “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 child 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,

(3) “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 family of the child could benefit from receiving child abuse and neglect prevention and intervention- related services, and

(4) “Ruled out” means a report in which a child protective services worker, after an investigation, determines that no child abuse or neglect has occurred;

66. “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;

67. “Sibling” means individual who satisfies at least one of the following conditions with respect to a child:

- a. A biologically or legally related brother or sister of a child;
 - b. The individual would have been considered a sibling of the child under part (a) above but for a termination or other disruption of parental rights, such as the death of a parent.
68. “Specialized foster care” means foster care provided to a child in a foster home or agency-contracted home which:
- a. has been certified by the Department of Children and Family Services,
- and
- b. is monitored by the Department.
69. “Sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act; or a severe form of trafficking in which a commercial sex act is induced by force, fraud, or coercion; or in which the person induced to perform such act has not attained eighteen years of age.
70. “Temporary custody” means court-ordered custody of an adjudicated deprived child;
71. “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;
72. “Traditional custodian” means those relatives and friends of the child other than the parent, who, based on the traditions, customs, and common law of the Choctaw Nation or of the family, have accepted the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for its support.
73. “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;
74. “Treatment and service plan” means a document written pursuant to Section 1-4-704 of this title; and
75. “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.

76. “Foster Parent” means a person, including a relative of the child, licensed by the Choctaw Nation Children and Family Services Foster Care Unit to provide temporary care for children in the legal custody of the Choctaw Nation of Oklahoma.¹

¹ Due to a scrivener’s error, this paragraph was added to Section 1-1-103 of this title in CB-91-22 eff. Jan. 12, 2022. It was editorially added to this section.

History

CB-114-18, eff. Aug. 15, 2018; CB-98-21, eff. Sept. 15, 2021; CB-91-22 eff. Jan. 12, 2022.

CHAPTER II. REPORTING AND INVESTIGATIONS

Section 1-2-101. Duty to Report Abuse or Neglect of Child Under Eighteen—Failure to Report—False Reports

A. 1. Every 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 Children and Family Services. Reports may be made by telephone, in writing, personally, or by any other method.

2. Every physician, surgeon, or other health care professional 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.

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 interfere with the reporting obligations of any employee or other person or in any manner discriminate or retaliate against, the employee or other person who in good faith reports suspected child abuse or neglect, or who provides testimony in any proceeding involving child 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.

5. Every physician, surgeon, or other health care professional 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, upon request, 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 Children and Family Services conducting an investigation of alleged abuse or neglect in the case.

B. Any person who knowingly and willfully fails to promptly report suspected child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

C. 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 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.

D. 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.

History

CB-114-18, eff. Aug. 15, 2018

Section 1-2-102. Preliminary Safety Analysis, Assessment and Investigation - Report and Findings - Referrals

A. 1. Upon receipt of a report that a child may be abused or neglected, the Department of Children and Family Services shall conduct an assessment or investigation in accordance with priority guidelines established by the Department.

2. The Department shall forward a report of its assessment or investigation and findings to any prosecutor's office which may have jurisdiction to file a petition pursuant to Section 1-4-902 of this Title.

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

a. the alleged perpetrator is someone other than a person responsible for the child's health, safety, or welfare, and

b. the alleged abuse or neglect of 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,

c. the Department shall immediately make a referral, either verbally or in writing, to the appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation.

2. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation unless:

a. 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,

b. 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

c. 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 the Department or a designee, the Department may assist law enforcement in interviewing children alleged to be victims of physical or sexual abuse.

C. 1. Any law enforcement agency receiving a referral as provided in this section shall provide the Department with a copy of the report of any investigation resulting from a referral from the Department.

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

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-2-103. Judicial Request for Investigation of Criminally Injurious Conduct

A judge of the district court may request an investigation be conducted by the Choctaw Nation Tribal Police or other law enforcement agency in cases where the court reasonably believes that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

History
CB-114-18, eff. Aug. 15, 2018;

Section 1-2-104. Immunity from Civil or Criminal Liability

A. Any, who, in good faith and exercising due care, reports suspected child abuse or neglect, or who 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.

B. For purposes of any proceeding, civil or criminal, the good faith of any person in making a report pursuant to the provisions of Section 1-2-101 of this Title shall be presumed.

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.

History

CB-114-18, eff. Aug. 15, 2018;

Section 1-2-105. Prompt Investigation of Child Abuse or Neglect - Health Records - Written Report - Temporary Restraining Order

A. 1. Any employee of the Department of Children and Family Services receiving a child abuse or neglect report 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, or by referring the report to such other tribal agency or department or agency of the State of Oklahoma for appropriate investigation. The Department may 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 a priority system pursuant to rules promulgated by the Department of Children and Family Services. The primary purpose of the investigation or assessment shall be the protection of the child.

2. If an investigation or assessment conducted by the Department 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.

B. 1. The investigation or assessment shall include a visit to the home of the child, 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. The visit shall include an interview with, and examination of, the subject child and may be conducted at any reasonable time and at any place including, but not limited to, the child's school. The Department shall notify the person responsible for the health, safety, and welfare of the child that the child has been interviewed at a school. The investigation or assessment may include an interview with the parents of the child or any other person responsible for the health, safety, or welfare of the child 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 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 prosecutor and upon cause shown, shall order the person 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 person responsible for the health, safety, or welfare of the child does not consent to a medical, psychological, or psychiatric examination of the child that is requested by the Department, the district court having jurisdiction, upon application by the prosecutor and upon cause shown, shall order the examination to be made at the times and places designated by the court.

3. The investigation or assessment may include an inquiry into the possibility that the child or a person responsible for the health, safety, or welfare of the child has a history of mental illness. If the person responsible for the child's health, safety, or welfare does not allow the Department to have access to behavioral health records or treatment plans requested by the Department, which may be relevant to the alleged abuse or neglect, the district court having

jurisdiction, upon application by the prosecutor and upon good cause shown, shall by order allow the Department to have access to the records pursuant to terms and conditions prescribed by the court.

4. a. If the court determines that the subject of the behavioral health records is indigent, the court shall appoint an attorney to represent that person at the hearing to obtain behavioral health records.

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

c. Access to 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 appropriate and possible, using a multidisciplinary team approach as provided by Section 1-9-102 of this Title. Law enforcement and the Department shall exchange investigation information.

C. 1. Every physician or surgeon making a report of abuse or neglect as required by this section 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 conducting an assessment or investigation of alleged abuse or neglect in the case.

2. As necessary in the course of conducting an assessment or 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.

D. If, before the assessment or investigation is complete, the Department determines that immediate removal of the child is necessary to protect the child from further abuse or neglect, the Department shall recommend that the child be taken into custody.

E. The Department shall make a complete written report of the investigation. The investigation report, together with its recommendations, shall be submitted to the prosecutor's office. Reports of assessment recommendations shall be submitted to prosecutors.

F. 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 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. If the family refuses voluntary services or does not access such services, and it is determined by the

Department that child's surroundings endanger the health, safety, or welfare of the child, the Department may recommend that the child be placed in protective or emergency custody or that a petition be filed.

G. If the Department has reason to believe that a person responsible for the health, safety, and welfare of the child may remove the child from the tribal jurisdiction before the investigation is completed, the Department may request the prosecutor to file an application for a temporary restraining order in the District Court of the Choctaw Nation of Oklahoma without regard to continuing jurisdiction of the child. Upon cause shown, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from the tribal jurisdiction pending completion of the assessment or investigation.

H. The Director of the Department or designee may request an investigation be conducted by the Choctaw Nation Tribal Police or other law enforcement agency in cases where the Department reasonably believes that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

History
CB-114-18, eff. Aug. 15, 2018;

Section 1-2-106. Notice of Complaint or Allegation to be Provided to Person Being Investigated

A. At the initial time of contact with a person responsible for the health, safety, or welfare of a child who is the subject of an investigation pursuant to the Choctaw Nation Children's Code, the Department of Children and Family Services shall advise the person of the specific complaint or allegation made against the person. If the Department is unable to locate the person, as soon as possible after initiating the investigation of the person, the Department shall provide to the person a brief and easily understood written description of the investigation process. Notice shall include:

1. A statement that the investigation is being undertaken by the Department pursuant to the requirements of the Choctaw Nation 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 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, a letter will be sent from the Department which will inform the 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 Children and Family 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 child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

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 right of the person to review records filed with the court in the event an action is filed;

8. The right of the person 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;

10. The process the person may use to acquire visitation with the child if the child is removed from the home; and

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. Every six (6) months such notice will reissue and include a determination stating whether the child is at imminent risk of removal, until either the Department terminates the investigation or judicial proceedings commence against the person responsible for the health, safety, or welfare of a child.

History
CB-114-18, eff. Aug. 15, 2018;

Section 1-2-107. Information Provided to a Person or Agency Providing Professional Services

A. The Department of Children and Family 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 1-2-101 of this title, information including the investigative determination, the services offered or provided, and such other information deemed necessary by the Department. The information shall be entered and maintained in the medical records of the child.

History

CB-114-18, eff. Aug. 15, 2018;

Section 1-2-108. Central Registry for Child Abuse, Sexual Abuse and neglect - Maintenance of Registry - Contents - Confidentiality

A. There is hereby established within the Department of Children and Family Services an information system for the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Choctaw Nation Children's Code.

B. The Department of Children and Family 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 1-2-101 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 tribal or federal law.

E. The Department of Children and Family Services shall promulgate rules governing the availability of such data and information.

F. Rules promulgated by the Department of Children and Family Services designed to facilitate cooperation with other states and tribes 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 Chapter VI of the Choctaw Nation Children's Code.¹

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

¹. Section 1-6-101, et. seq. of this Title.

History
CB-114-18, eff. Aug. 15, 2018

Section 1-2-109. Relinquishment of child 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 any 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 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 seven (7) days of age or younger if the child is voluntarily delivered to the entity by the parent of the child and the parent did not express an intent to return for the child:

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 pursuant to the provisions of this section may:

1. Request, but not demand, any information about the child 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 or the parents of the child. The entity shall respect the wish of the parent if the parent desires to remain anonymous; and
2. Provide the parent with printed information relating to the rights of the parents, including both parents, with respect to reunification with the child and sources of counseling for the parents, if desired.

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

1. Perform or provide for the performance of any act necessary to protect the physical health or safety of the child; and
2. Notify the local office of the Department that a parent of a child seven (7) days of age or younger, in the best judgment of the receiving entity, has relinquished such child and that the entity has taken possession of the child.

E. Upon being made aware that a medical services provider or child rescuer has possession of a child under the provisions of this act, the Department of Children and Family 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.

F. The Department 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 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 actions of the entity, if acting in good faith in receiving a relinquished child. 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.

History

CB-114-18, eff. Aug. 15, 2018;

CHAPTER III. MEDICAL AND BEHAVIORAL HEALTH TREATMENT

Section 1-3-101. Authorization to Consent to Medical or Dental Care

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

- 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, to be rendered to said minor under the general or special supervision and upon the advice of a physician and surgeon, 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.

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 section 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, a school nurse or in the absence of such nurse, a school administrator or designated school employees to administer:

1. A nonprescription medicine; and
2. A prescription medicine of such minor child.

History

CB-114-18, eff. Aug. 15, 2018;

Section 1-3-102. Authorization to Consent to Emergency Medical Care

A. For purposes of this section:

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 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; and

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 health or life of the child. 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.

C. 1. If a child has been placed in the custody of the Department of Children and Family Services, 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.

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.

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 prosecutor and notice to all parties, and may authorize such recommended extraordinary care.

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 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.

History
CB-114-18, eff. Aug. 15, 2018;

Section 1-3-103. Civil and Criminal Immunity for Persons Acting Pursuant to Act, Court Order, or Consent

No peace officer, employee of the court, employee of the Department of Children and Family Services, or person consenting or not consenting to medical treatment or behavioral health evaluation or treatment in accordance with the provisions of this Title shall have any liability, civil or criminal, for such action. No physician or health care provider acting pursuant to consent or pursuant to court order authorizing treatment shall have any liability, civil or criminal, for acting pursuant to consent or authorization.

History
CB-114-18, eff. Aug. 15, 2018;

CHAPTER IV. COURT PROCEEDINGS

PART 1. JURISDICTION

Section 1-4-101. Jurisdiction - Temporary Order - Interlocutory Relief - Conflicting Orders - Venue - Transfer of Proceedings

A. 1. Upon the filing of a petition, the assumption of the custody of a child, or issuance of an emergency custody order pursuant to the provisions of the Choctaw Nation Children's Code, the district court shall obtain jurisdiction over any child who is, or is alleged to be, deprived. Jurisdiction shall also be obtained over any parent, legal guardian, or custodian of and any other person living in the home of such child who appears in court or has been properly served with a summons pursuant to Section 1-4-304 of this Title.

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 court has prior or current jurisdiction to determine the custody, support, or visitation of the child,

c. any and all other actions then pending or thereafter commenced within the Choctaw Nation that concerns the custody, support, or visitation of the child 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 Choctaw Nation Juvenile Code,

d. all orders entered in the deprived proceeding concerning the custody, support, or visitation of a child shall control over conflicting orders entered in other actions until such time as the jurisdiction of the court 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.

B. 1. Venue of any action involving a child alleged to be deprived may be in any county of the State of Oklahoma within the Reservation of the Choctaw Nation of Oklahoma 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. 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 a prior court order or

by operation of law.

a. If there is no order determining the custody of the child, the custodian of the child shall be:

(1) both parents where they reside together,
(2) the primary or actual physical custodial parent where parents do not reside together, or

(3) the mother where paternity has or has not been established.

b. The residence of a newborn child 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 residence of the child 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.

3. The place of holding court will be determined by the appropriate court.

History

CB-114-18, eff. Aug. 15, 2018; CB-90-23, eff. July 12, 2023.

Section 1-4-102. Custody or Visitation Proceeding - Evidence of Child Abuse or Neglect - Referral for Investigation - Prosecutor to Decide Whether to File Deprived Petition - Attorney or Guardian Ad Litem for Child

A. 1. If the evidence in a court proceeding concerning child custody or visitation indicates that a child may be a victim of abuse or neglect, the court shall refer the allegations to the Department of Children and Family Services 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.

3. The Department shall submit a report of its assessment or investigation to the office of the prosecutor and provide a copy of its reports to 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 prosecutor shall advise the referring court within three (3) days of the receipt of the findings of the Department whether a deprived petition will be filed by that office. If no deprived petition is filed, the referring court may take appropriate action regarding the custody or visitation of the child.

B. Nothing in this Section shall:

1.¹ preclude the referring court from entering an order to have the child taken into emergency custody 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 placed into emergency custody by such an order, the provisions of Chapter IV of the Choctaw Nation Children's Code shall apply, or

2.² preclude any court presiding over any proceeding from referring allegations of child abuse or neglect to the Department for assessment or investigation.

C. If, in any proceeding 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 may appoint a guardian ad litem for the child as permitted by law.

¹⁻² Editorially renumbered.

History

CB-114-18, eff. Aug. 15, 2018.

PART 2. PROTECTIVE AND EMERGENCY CUSTODY

Section 1-4-201. Child Taken into Custody Prior to Filing of Petition - Pre-Petition Emergency Custody Orders

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:

- a. the child is in need of immediate protection due to 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; or

2. By an order of the district court issued upon the application of the prosecutor. The application presented by the prosecutor may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that a continuation of the child in the home or with the caretaker of the child is contrary to the child's welfare, and there is reasonable suspicion 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.

The application and order may be verbal and upon being advised by the prosecutor of the verbal order, law enforcement shall act on such order. If verbal, the prosecutor shall submit a written application and proposed order 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; or

3. By order of the district court when the child is in need of medical or behavioral health treatment in order to protect the health, safety, or welfare of the child and the parent, legal guardian, or custodian of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action, the court shall specifically include in the emergency order authorization for such medical or behavioral health evaluation or treatment as it deems necessary.

B. When an order issued by the district court pursuant to subsection A of this section places the child in the emergency custody of the Department of Children and Family Services pending further hearing specified by Section 1-4-203 of this Title, an employee of the Department may execute such order and physically take the child into custody in the following limited circumstance:

1. The child is located in a hospital, school, or day care facility; and
2. It is believed that assumption of the custody of the child from the facility can occur without risk to the child or the employee of the Department.

Otherwise, the order shall be executed and the child taken into custody by a peace officer or employee of the court.

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

1. That continuation in the home of the child 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 home of the child is reasonable because the removal is due to an emergency and is for the purpose of providing for the welfare of the child.

D. Whenever a child is taken into custody pursuant to 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;
2. Except as otherwise provided by subsection E 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 pending further hearing specified by Section;

3. The child may be taken directly to, or retained in, a health care facility for medical treatment, when the child is in need of emergency medical 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 behavioral health treatment facility for evaluation, or inpatient treatment, in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act¹, when the child is in need of behavioral health care to preserve the child's health, or as otherwise directed by the court; and

5. Except as otherwise provided by subsection E of this Section, the district court 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.

E. 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 custody and notification of the assumption of such custody. Such order or rule shall be consistent with the provisions of subsection D 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 the facility is willing to provide care; and

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 responsible persons, as the court may designate, who are willing to provide care for the child pending further proceedings.

F. No child taken into custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility.

G. 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.

H. 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 this request, the peace officer may release the child to the physical custody of the designated person.

¹ Not yet codified.

Section 1-4-202. Notice of Custody Hearing

A. The peace officer, employee of the court, or the employee of the Department of Children and Family Services responsible for assuming physical custody of a child shall provide the parent, legal guardian, or physical custodian of 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 possible.

B. The written notice shall inform the parents, legal guardian, or custodian of the following:

1. That an emergency custody hearing to determine custody of the child will occur within two (2) judicial days from the date the child was taken into custody;
2. The date, time, and place for the emergency custody hearing;
3. The nature of the allegation that led to placement of the child into protective or emergency custody;
4. The address and telephone number of the applicable law enforcement agency and the Department; and
5. The right to contact an attorney.

C. The written notice shall also contain the following language:

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

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-203. Emergency Custody Hearing

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 Choctaw Nation Evidence Code.¹ At the hearing the court shall:

1. Determine whether facts exist that are sufficient to demonstrate to the court there is 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 of the child 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;

2. Advise the parent, legal guardian, or custodian of the child in writing of the

following:

- a. any right of the parent, legal guardian, or custodian to testify and present evidence at court hearings,
 - b. the right to be represented by an attorney at court hearings,
 - c. the consequences of failure to attend any hearings which may be held,
- and
- d. the right to appeal and procedure for appealing an order of the court.

3. Determine custody of the child and order one of the following:

- a. release of the child to the custody of the child's parent, legal guardian, or custodian from whom the child was removed under any conditions the court finds reasonably necessary to protect the health, safety, or welfare of the child, or
- b. after determining that release of the child to the custody of the child's parent, legal guardian, or custodian would be contrary to the child's welfare, or that the placement would not be in the best interest of the child:

- (1) place the child in the custody of a responsible adult or licensed child-placing agency under any conditions the court finds reasonably necessary to protect the health, safety, or welfare of the child, or

- (2) continue the child in or to place the child into the emergency custody of the Department of Children and Family Services;

4. 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 potential placement of the child with the relative. If no such relative exists, the court shall 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. 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; and

6. In accordance with the safety or well-being of any child, determine whether reasonable efforts have been made to:

- a. place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and

b. provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together.

B. The court clerk shall create an affidavit form and make it available in each courtroom where emergency custody hearings are conducted. 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.

C. 1. The Department shall, within thirty (30) days of the removal of a child, exercise due diligence to identify and provide notice to all adult relatives of the child. The notice shall advise the relatives:

a. the child has been or is being removed from the custody of the parent or parents of the child,

b. the options under applicable law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, and

c. the requirements to become a foster family home and the additional services and supports available for children placed in the home.

d. how the relative guardian of the child may subsequently enter into an agreement with the Department to receive the payments under the kinship guardianship assistance program.

2. Relatives shall not be notified if notification would not be in the best interests of a child due to past or current family or domestic violence. The Department may promulgate rules in furtherance of the provisions of this subsection.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-204. Award of Custody or Determination of Placement - Preference for Relatives and Persons with Kinship Relationship

A. 1. When awarding custody or determining the placement of a child, a preference shall be given to relatives and persons who have a kinship relationship with the child. The Department of Children and Family Services shall make diligent efforts to place the child with such persons and shall report to the court the efforts made to secure that placement.

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.

3. 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. the person who has the closest existing personal relationship with the child if more than one person requests placement of the child 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.

B. 1. The Department of Children and Family Services shall 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 shall 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.

C. 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.

D. Following an initial placement with a relative, whenever a new placement of the child is made, consideration for placement shall again be given as described in this section to approved relatives who will fulfill the reunification or permanent plan requirements of the child. The Department shall consider whether the relative has established and maintained a relationship with the child.

E. 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.

F. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-205. Records of Child Released from Protective Custody Prior to Hearing - Petition for Deprived Child Proceeding - Hearings - Order for Removal of Child from Home

A. The prosecutor and the Department of Children and Family 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.

B. 1. A petition for a deprived child proceeding shall be filed and a summons issued within seven (7) judicial days from the date the child is taken into custody unless, upon request of the prosecutor 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 the assumption of custody.

2. If a petition is not filed as required by this subsection, the emergency custody order shall expire. The prosecutor 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.

C. 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.

D. In scheduling hearings, the court shall give priority to proceedings in which a child is in emergency custody.

E. An order of the court providing for the removal of a child alleged to be deprived from the home of the child shall not be entered unless the court makes a determination:

1. That continuation of the child in the child's home is contrary to the health, safety, or welfare of the child; and
2. 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
3. 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
4. That reasonable efforts to provide for the return of the child to the child's home are not required pursuant to Section 1-4-809 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-206. Restraining Order - Service - Hearing - Notice of Order - Termination and Renewal - Penalties for Violations

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.

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 the same to the tribal police or other person qualified to serve the order for service upon the person to be restrained; and

2. The tribal police 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 tribal police or other person cannot complete service within ten (10) days, the tribal police or other person shall file a return to the clerk of the court showing that service was not completed and the reason for the 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 twenty-one (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 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 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 paragraph 1 of this subsection 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 twelve (12) months 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 twelve (12) months 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 tribe 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 tribal police. The tribal police 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 the 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 of not more than six (6) months, or both such fine and imprisonment.

I. Operated by the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-207. Immediate Assumption of Custody and Ordering of Necessary Actions

Nothing contained in the Choctaw Nation Children's Code shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical or behavioral health treatment, to protect the child's health, safety, or welfare; however, the first court ruling that sanctions the removal of a child must make the determination that custody by the child's parent, legal guardian, or custodian would be contrary to the welfare, or that the placement would be in the best interest, of the child.

History

CB-114-18, eff. Aug. 15, 2018.

PART 3. PETITION, SUMMONS, APPOINTMENT OF COUNSEL AND OTHERS

Section 1-4-301. Verified Petition - Contents - Delivery with Summons - Signature

A. 1. A petition in a proceeding alleging a child to be deprived may be filed by the prosecutor to determine if further action is necessary. The proceeding shall be entitled "In the matter

of _____, an alleged deprived child”.

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 chapter,
- b. the name, 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
- g. the relief requested including, but not limited to, or where applicable:
 - (1) an adjudication that the child is deprived,
 - (2) a termination of parental rights,
 - (3) the entry of an order for child support, and
 - (4) a judicial determination of the child’s paternity.

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. A petition alleging a child to be a minor in need of treatment shall be filed by a prosecutor pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act of the Choctaw Nation Statutes.¹

C. A copy of the petition alleging a child to be deprived shall be attached to and delivered with the summons.

D. Any petition filed by the prosecutor shall be signed by the prosecutor or by an authorized assistant.

¹ Not yet codified.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-302. Pleadings and Motions Subsequent to Petition - Amendment of Petition - Post-adjudication Petition

A. No pleading subsequent to the petition 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. The court shall liberally allow the petition to be amended at any time to add, 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 adjudicatory ruling of the court. 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 as may be required to ensure a full and fair hearing. 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, if the tribe subsequently alleges new facts, or different conditions are discovered to be sufficient, if sustained, to support a finding that the child is a deprived child, then the tribe may file a subsequent petition entitled "Post-adjudication Petition." This section shall not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations.

D. 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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-303. Scheduling of Hearing - Issuance and Contents of Summons – Service - Waiver of Service

A. 1. 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 (12) 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 person having the physical custody or control of the child to bring the child to the hearing.

2. The summons shall 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.

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.

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. A party other than the child may waive service of summons in writing or by voluntary appearance at the hearing. A child's counsel may waive service of summons on the child's behalf.

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 the person.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-304. Service of Summons - Time of Adjudication Hearing - Distinct and Meaningful Search for Parents and Guardians

A. 1. Service of summons shall be made by personal delivery, by mail, or by publication as provided for in civil actions.

2. The court shall not hold the adjudication hearing until at least forty-eight (48) hours after the service of summons.

3. If the parent or legal guardian is not served within the tribe, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons.

4. The tribe 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 the Choctaw Nation Children's Code; provided, that a hearing shall not be delayed if a parent or legal guardian cannot be located.

B. 1. Before service by publication is authorized, the tribe shall file an affidavit with the court stating that after a distinct and meaningful search of all reasonably available sources, the parent, or legal guardian of the child could not be identified or located, as applicable, and describing the diligent efforts made to identify, locate, and serve the party. The affidavit shall be sufficient evidence of the diligence exercised by the tribe to identify or locate a party who is the subject of the publication notice.

2. Upon complying with this subsection, the tribe 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 the party at his or her last-known place of residence. Service by publication is complete on the date of the last publication in accordance with paragraph 3 of this subsection.

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 the name of a party 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 mother and father of the child, 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 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 shall be made by publishing a notice once a week for three (3) consecutive weeks, with the first publication of notice occurring 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 parent or legal guardian resides or in the county where the parent or legal guardian was last known to reside if the present residence of the parent or legal guardian is not known. If no newspaper authorized by law to publish legal notices is published in the 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 upon a determination by the court that there is reason to believe 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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-305. Failure to Appear - Consent to Adjudication of Child to be Deprived - 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 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, 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, custodian of the child, or the child.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-306. Appointment of Counsel, Guardian Ad Litem - Court Appointed Special Advocates - Access to Files and Records

A. 1. a. If a parent or legal guardian of the child requests an attorney and is found to be indigent, counsel 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; provided, that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parent, legal guardian, or custodian,

b. the court shall not be required to appoint an attorney for any person other than a parent, or legal guardian of the child pursuant to the provisions of this paragraph,

2. a. The court may appoint an attorney or a guardian ad litem for the child when an emergency custody hearing is held; provided, that when a petition is filed alleging the child to be deprived, the court shall appoint a separate attorney for the child, who shall not be a prosecutor, 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 child's attorney shall be independent of, and not selected by, the prosecutor, 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,

b. 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 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,

c. 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.

4. When an attorney is required to in order to represent a child or children whom the attorney has been court-appointed to represent a child or children whom the attorney has been court-appointed to represent, the court may in its discretion allow the attorney a reasonable reimbursement for mileage. The court shall ensure that the child is represented by independent counsel throughout the pendency of the deprived action.

B. 1. 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 Children and Family Services, a licensed child-placing agency, or another party to the action.

2. A guardian ad litem shall not be a prosecutor, an employee of the office of the prosecutor, 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.

3. 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 best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. monitor the best interests of the child throughout any judicial proceeding, and

d. present written reports on the best interests of the child that include conclusions and recommendations and the facts upon which they are based.

4. 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.

C. 1. Whenever a court-appointed special advocate program is available to the court to serve as a guardian ad litem, priority 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.

2. For purposes of the Choctaw Nation Children's Code, 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 Court of Appeals.

3. A court-appointed special advocate shall serve without compensation.

History

CB-114-18, eff. Aug. 15, 2018.

PART 4. DISCOVERY AND PRE-TRIAL PROCEEDINGS

Section 1-4-401. Applicability of Discovery Code and District Court Rules - Court Ordered Exchange of Information - Confidentiality - Scheduling and Other Orders

A. The provisions of the Choctaw Nation Discovery Code¹ and the Rules for the Choctaw Nation District Court² 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 assessment and investigation records of the Department of Children and Family Services; 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.

¹⁻² Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

PART 5. CONDUCT OF HEARINGS

Section 1-4-501. Prosecutor to Prepare and Prosecute Case and Act as Petitioner in all Cases

Except as otherwise provided by this Code, the prosecutor shall prepare and prosecute every hearing and proceeding within the purview of the Choctaw Nation Children's Code, and shall act as petitioner in all cases.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-502. Non-Jury Trials

The termination of parental rights shall be tried to the district court without a jury.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-503. Conduct of Hearings

A. All cases initiated by the filing of a petition alleging that a child is deprived 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.

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 adirect interest in the case shall be admitted, except as otherwise determined by the court.

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 fromthe Department of Children and Family Services concerning a child or family who is receiving Title IV-B child welfare services foster care or adoption assistance pursuant to Title IV-E of the Social Security Act (42 U.S.C. 678 et seq.), 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 keptconfidential.

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 Court of Appeals. The Court of Appeals may request the assistance of any person, agency, or department in the development of the orders. In addition to the findings and determinations required to be made by the court pursuant to the Choctaw Nation 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 Choctaw Nation 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 shall 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.

B. A child shall not refuse to be a witness in a hearing to determine whether or not the child is deprived. 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.

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-504. Alternative Dispute Resolution

A. At any stage of the proceedings, the court may order, or the parties may voluntarily participate in an alternative dispute resolution process which may include:

1. Family group conferencing;
2. Mediation; or
3. A settlement conference.

B. If a court orders an alternative dispute resolution process, a party who does not wish to participate may file a motion objecting to the order. Any resolution agreed to by the parties through an alternative dispute resolution process shall not be binding on the court.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-505. Applicability of Section - Admissibility of Child Statement Recorded before Proceedings Begin

A. This section shall apply only to a proceeding brought within the purview of the Choctaw Nation Children's Code in which a child twelve (12) years of age or younger is alleged to be deprived, and shall apply only to the statement of that child or 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 totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it

inherently trustworthy. In determining 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 the child either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Choctaw Nation Evidence Code,¹ or

b. is unavailable as a witness as defined by the Choctaw Nation Evidence Code.² 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. However, 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 statement of the child;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is 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 available to the parties.

A statement may not be admitted under this subsection 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.

¹⁻² Not yet codified.

History
CB-114-18, eff. Aug. 15, 2018; CB-90-23, eff. July 12, 2023.

Section 1-4-506. Testimony of Child Taken in Room other than Courtroom - Court Order

A. This section shall apply only to a proceeding brought under the Choctaw Nation Children's Code in which a child at the time of the testimony is alleged to be deprived, and shall apply only to the testimony of that child or other child witness.

B. 1. When appropriate facilities are reasonably available, the court 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 for review by:

- a. the court, and
- b. the parties to the proceeding.

2. Only an attorney for each party, an attorney, or guardian 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.

3. 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. 1. The court 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:

- a. the court, and
- b. the parties to the proceeding.

2. 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.

3. 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:

- a. the recording is both visual and aural and is recorded on film or videotape or by other electronic mean;
- b. 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;
- c. every voice on the recording is identified, and

d. 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 subsection 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 subsection 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 or her client prior to conclusion of the testimony.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-507. Admissibility of Evidence

In any proceeding resulting from a report made pursuant Section 1-2-101 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-508. Use Immunity

A. At any stage of a proceeding under the Choctaw Nation Children's Code:

1. The parent or legal guardian, the child's attorney, or the prosecutor's office 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 testimony of the parent or legal guardian in a deprived proceeding;

2. The child's attorney or the prosecutor's office 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, the production of which was compelled by a court order; or

3. The child's attorney or the prosecutor's office 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 of Children and Family Services 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.

B. 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.

History

CB-114-18, eff. Aug. 15, 2018.

PART 6. ADJUDICATION HEARING

Section 1-4-601. Time for Adjudication Hearing - Effect of Delay - Stipulations - Testimony - Non-Jury Trial

A. The court shall hold an adjudication hearing following the filing of a petition alleging that a child is deprived. The 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 the hearing.

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 health, safety, or welfare of the child 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 subsection, the emergency custody order shall expire unless the hearing on the merits of the petition is held within one hundred eighty (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 temporary orders the court deems necessary to provide for the health, safety, and welfare of the child pending the hearing on the petition.

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 tribe 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 tribe's burden of proving by a preponderance of the evidence that the factual allegations are true and correct; or

3. Conduct a nonjury trial to determine whether the tribe has met its burden of proving by a preponderance of the evidence that the factual allegations in the petition are true and correct.

E. 1. A decision determining a child to be deprived in a nonjury trial shall be based on sworn testimony.

2. The child, as a party to the proceeding, shall be given the opportunity to cross-examine witnesses and to present a case in chief if desired.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-602. Factual Allegations of Petition not Supported by a Preponderance of the 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-603. Factual Allegations of Petition Supported by a Preponderance of the Evidence

A. If the court finds that:

1. The factual allegations in a petition filed by the tribe alleging that a child is deprived are supported by a preponderance of the evidence;

2. Such allegations are sufficient to support a finding that the child is deprived; and

3. It is in the best interests of the child that the child be declared to be a deprived child and made a ward of the court, then 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 result in the termination of parental rights to the child.

C. When a child has been adjudicated deprived, the court shall enter a dispositional order pursuant to the provisions of Section 1-4-707 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 (2) days of the adjudication and provide a valid, current address or other place where the parent or other legal custodian may be served with a summons. In the event that the address or place where the parent or legal custodian may be served a summons

changes during the course of the litigation, the parent or other legal custodian 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 or other legal custodian unless the tribe has actual knowledge of the parent or other legal custodian's location.

History

CB-114-18, eff. Aug. 15, 2018.

PART 7. DISPOSITIONAL HEARINGS

Section 1-4-701. Costs and Expenses for Care and Maintenance of Child - Orders for Enforcement - Penalties for Willful Failure to Pay

A. 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 Children and Family 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 Choctaw Nation 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 Choctaw Nation 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, service fees, witness fees, transcripts, and postage.

B. The court may order the terms and conditions of the payment of costs and expenses described in subsection 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 as provided by law.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-702. Paternity and Support of Alleged or Adjudicated Deprived Child - Support Orders and Payments - Rules

A. 1. When paternity of an alleged or adjudicated deprived child 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 district court for any child for whom paternity has not been legally established according to the Uniform Parentage Act.¹

2. When paternity is 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 the deprived action.

3. After the establishment of paternity, the court shall address current child support pursuant to subsection B of this section. In addition, the court may:

a. order the father to pay child support for past months when no child support order was in effect, or

b. reserve the issue of prior support.

4. The order establishing paternity shall be filed as a separate document and shall not be confidential. The court clerk shall provide, upon request, a copy of the order establishing paternity to a representative of any tribal or state child support services agency or employee acting in his or her official capacity. 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.

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 address the issue of child support or defer the issue of establishment or enforcement of child support to the appropriate court or administrative agency or department.

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 by law 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 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 as provided by law,

g. a child support computation form shall be completed by the court, counsel of record, or may be referred to any other agency or department for completion. Upon being assigned by the judge, the computation form shall be incorporated as a part of the child support order,

h. (1) a standard child support order form shall be used in the deprived action,

(2) the child support order shall be filed as a separate document and shall not be confidential,

(3) The court clerk shall provide, upon request, a copy of the support order to a representative of any tribal or state child support services agency or department. 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 district court case, the deprived action child support order shall be docketed and filed in a new district court 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 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 in the manner as directed by the court.

D. When a child's custody is changed from one parent or caretaker to another pursuant to the Choctaw Nation Children's Code, the change in custody shall transfer child support payments to the new caretaker unless otherwise ordered by the court. Child support payments to the caretaker shall terminate when the child no longer resides with the caretaker.

E. The Department of Children and Family Services shall promulgate rules necessary to implement the provisions of this section.

¹ Section 1-10-101, et seq. of this Title.

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-703. Examination of Child by Physician - Behavioral Health Evaluation - Investigation of Child's Home Conditions and Environment

A. After a petition 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 behavioral health evaluation of a child as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.¹

B. After adjudication, and at the request of a judge, in any juvenile proceeding, the Department of Children and Family Services 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 Indian tribe or of a state, the Department may conduct a similar investigation.

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-704. Written Individualized Service Plan - Preparation - Disputes and Hearing - Contents - Modifications

A. The Department of Children and Family Services 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.

B. The plan shall be furnished to the court within thirty (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 or the licensed child-placing agency having custody of the child or responsibility for the supervision of the case.

C. 1. The 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 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 health and safety of the child shall be the paramount concern in the development of the plan.

2. 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.

3. When approved by the court, each individualized service plan shall be incorporated and made a part of the dispositional order of the court.

4. The plan shall be signed by:

a. the parent or parents or legal guardian of the child,

- b. the attorney for the parent or parents or legal guardian of the child,
- c. the child's attorney,
- d. the guardian ad litem of the child, which may be a court-appointed special advocate,
- e. the child, if possible, and
- f. the Department or other responsible agency.

D. 1. Every service plan prepared shall be individualized and specific to each child and the family of the child.

2. The individualized service plan shall be written in simple and clear English. If English is not the principal language of the parent, legal guardian, or custodian of the child, and such person is unable to read or comprehend the English language, to the extent possible the plan shall be written in the principal language of the person.

3. The individualized service plan may be modified 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.

4. The individualized service plan shall be measurable, realistic, and consistent with the requirements of other court orders.

E. The 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;

2. Identification of 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;

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. The most recent available health and educational records of the child shall be provided to the court upon the court's request including:

- a. the names and addresses of the child's health and educational providers,
- b. the child's grade-level performance,
- c. the child's school record,
- d. a record of the child's immunizations,

e. the child's known medical problems, including any known communicable diseases,

f. the child's medications, and

g. any other relevant health and education information.

4. A schedule of the frequency of services and the means by which delivery of the services 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;

5. The name of the social worker assigned to the case;

6. A projected date for the completion of the individualized service plan;

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;

8. The name and business address of the attorney representing the child;

9. If the child is placed outside the home, the individualized service plan shall further provide:

a. the sequence and time frame for services to be provided to the parent, the 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,

b. 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,

c. a description of any services or resources that were requested by the child or the parent or legal guardian of the child 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,

d. efforts to be made by the parent of the child and the Department to enable the child to return to his or her home,

e. 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 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,

f. 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,

g. 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, and

h. a plan for ensuring the educational stability of the child while in out-of-home placement, including:

(1) assurances that the placement of the child considers the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement, and

(2) where appropriate, an assurance that the Department has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child was enrolled at the time of placement, or

(3) if remaining in the school in which the child was enrolled at the time of placement is not in the best interests of the child, assurances by the Department and the local educational agencies to provide immediate and appropriate enrollment in a new school with all of the educational records of the child provided to the school;

10. The permanency plan for the child, the reason for selection of that plan, a description of the steps being taken by the Department to finalize the plan, and when the permanency plan is adoption or legal guardianship, the Department shall 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 tribe.

F. Each individualized service plan shall specifically provide for the safety of the child, in accordance with tribal 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.

G. The 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.

H. Whenever a child who is subject to the provisions of this section is committed for inpatient behavioral health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act¹, the 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 behavioral health or substance abuse treatment.

¹ Not yet codified.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-705. Placement of Child Custody with Individual, Agency, or Institution - Religious Faith of Parents or Child - Disqualifying Crimes and Offenses

A. In placing a child in the custody of an individual, a private agency, or institution, the court and the Department of Children and Family Services shall, if possible, select a person, 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.

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. If an individual meets the minimum required age for placement purposes, the age of an otherwise eligible individual shall not be a reason for denying the individual placement or custody of a child.

C. 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; or
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.

D. 1. Under no circumstances shall a child be placed with or in the custody of an individual subject to registration as a sex offender or an individual who is married to or living with an individual subject to registration as a sex offender.

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 felony or relevant misdemeanor or has any felony or misdemeanor charges pending.

3. Prior to the custody order being entered, the individual seeking custody shall provide a criminal history record to the court.

4. For purposes of this subsection the terms:

a. “relevant misdemeanor” may include assault and battery, alcohol or drug- related offenses, domestic violence, or other offenses involving the use of physical force or violence against the person or property of another, and

b. “individual” shall not include a parent or legal guardian of the child.

E. The provisions of this section shall not apply in any paternity or domestic relations case, unless otherwise ordered by the court.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-706. Time of Dispositional Hearing - Evidence - Modification of Other Orders - Scheduling of Periodic Review and Permanency Hearings

A. The following kinds of dispositional orders may be made 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 Children and Family Services in the home of the child 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, subject to such conditions as the court may prescribe that would reasonably prevent the child from continuing to be deprived,

b. the court may place the child with the noncustodial parent, if available, completion of a home assessment, unless the court finds that the placement would not be in the best interests of the child. Any party with knowledge of the facts may present evidence to the court regarding whether the placement is in the best interests of the child. If the court places the child with the parent, it may do either of the following:

(1) order that the noncustodial parent assume 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. The final order entered determining custody, visitation and

child support from the deprived action:

(A) shall remain in full force and effect and shall control over any custody or child support order entered in a district court action initiated prior to or during the pendency of the deprived action until such time as it is modified by a subsequent order of the district court, and

(B) may be docketed and filed in the prior existing or pending district court action; provided, however, if there is no district court action then in existence, the surviving order may be used as the sole basis for opening a new district court action in the same county where the deprived action was pending or in the county where the legal custody of the child reside. 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:

(1) in the prior existing or new district court action, or

(2) in the order that the noncustodial 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.

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,

d. if the court issues an order for protective supervision of the child in the home of a parent, the court may order any of the following:

(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, and

(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,

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 twelve (12) months. In appropriate circumstances, the court may extend or reduce the period of supervision by the Department,

2. a. if the court is unable to place the child in the home of a parent, the court shall give a preference for placing temporary custody of the child with a relative as specified in Section 1-4-204 of this Title, subject to the best interests of the child and the conditions and restrictions specified in Section 1-4-705 of this Title. In determining whether to place temporary custody of the child with a relative, the court may consider the following factors:

(1) the physical, psychological, educational, medical, and emotional needs of the child,

(2) the wishes of the parent, the relative, and the 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, and

(6) the ability of the relative to do the following:

(A) provide a safe, secure, and stable environment for the child,

(B) exercise proper and effective care and control of the child,

(C) provide a home and the necessities of life for the child,

(D) protect the child from his or her parents,

(E) facilitate court-ordered reunification efforts with the parent,

(F) facilitate visitation with the child's siblings and other relatives, and

(G) 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 paragraph. 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 permanency needs of the child,

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.

3. a. 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,

b. in placing a child in a private institution or agency, the court shall select one that is licensed by the Department or of any state department supervising or licensing private institutions and agencies,

c. 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 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 tribe and federal Indian Child Welfare Acts when applicable,

(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) 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, or

(8) an independent living program.

b. (1) Unless the child is placed with relatives, 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,

(2) if an appropriate placement is not available in the county of residence of the parent or legal guardian, the child shall be placed in an appropriate home in the nearest proximity to the resident county of the parent or legal guardian,

(3) 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 reason of the parent or legal guardian 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.

5. 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.

6. a. 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:

- (1) protection of the physical safety of the child,
- (2) protection of the life of the child,
- (3) protection of the child from being traumatized by contact with the parent, and
- (4) the child's expressed wishes.

b. a court may not deny visitation based solely on the failure of a parent 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. The court may order a permanent guardianship to be established as more fully set forth in Section 1-4-709 of this Title.

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.

B. Any order entered pursuant to this section shall include:

1. 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

2. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-707. Dispositional Orders - Required Information

A. 1. 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, reasonable efforts have been made to provide for the safe return of the child to the child's own home.

2. 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 was initially removed from the child's home, absent a finding of compelling reasons to the contrary.

3. 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 complete the steps necessary to finalize the permanent placement of the child.

4. Reasonable efforts to reunite the child with the child's family shall not be required pursuant to the provisions of Section 1-4-809 of this Title.

B. 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.

C. In accordance with the safety or well-being of any child, the court shall determine in any dispositional order whether reasonable efforts have been made to:

1.² place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and

2.³ provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together.

¹ Indian Child Welfare Act, 25 U.S.C. §1901, et seq.

²⁻³ Paragraphs editorially renumbered.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-708. Deprived Adjudication for Repeated Absence from School

A. 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.

B. Prior to final disposition, the court shall require verification by the appropriate school district that the child found to be truant has been evaluated for literacy, learning disabilities, developmental disabilities, hearing and visual impairment, and other impediments which could constitute an educational handicap. The results of such assessments or evaluations shall be made available to the court for use by the court in determining the disposition of the case.

C. 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.

D. A deprived adjudication based solely upon repeated absence from school shall not constitute a ground for termination of parental rights.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-709. Required Conditions for Establishing Permanent Guardianship - Rights and Responsibilities of Permanent Guardian

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 best interests of the child 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 providing for the child until the child reaches the age of majority and to preparing the child for adulthood and independence;

7. The prospective guardian agrees not to 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; and

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.

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 the guardianship statutes of the Choctaw Nation¹ 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.

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-710. Motion for Permanent Guardianship - Notice of Hearing - Home Assessment - Required Findings - Visitation - Order

A. The prosecutor 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, and, if so, the length of time and the circumstances surrounding the child's stay; and

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 of Children and Family Services, and the guardian ad litem of the child, if any. Service shall not be required on the parent whose rights have been previously terminated.

C. 1. 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 best interest of the child. The Department shall promulgate rules in furtherance of the duties imposed by this subsection. However, the prospective guardian shall be responsible to obtain the house assessment if the child is not in the custody of the Department.

2. The findings of the home assessment shall be set forth in a written report provided to the court, the prosecutor, the child, and the 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 of 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 rights of the parent is either not legally possible or not in the best interests of the child, or adoption is not the permanency plan for the child,

c. the child has resided with the permanent guardian for at 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, and

e. the proposed permanent guardian:

(1) is emotionally, mentally, physically, and financially suitable

to become the permanent guardian,

(2) has expressly committed to remain the permanent guardian for the duration of the child's minority, and

(3) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian.

2. A decree of permanent guardianship divests the parents of legal custody or guardianship of the child, but is not a termination of parental 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 by law.

F. 1. An order appointing a permanent guardian shall:

a. require that the placement be reviewed within twelve (12) months after transfer, and may require the permanent guardian to submit any records or reports the court deems necessary for purposes of such review,

b. not require the Department to supervise the placement during such period of time,

c. not require periodic reviews by the court thereafter if the parties agree with the assent of the court that the reviews are not necessary to serve the best interests of the child, unless periodic reviews are otherwise required by the court.

2. 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 Code.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-711. Modification or Termination of Permanent Guardianship

A. 1. A motion for modification or termination of a permanent guardianship may be filed by the permanent guardian, the child, or the prosecutor. 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 parent of the child is presently able and willing to properly care for

the child,

b. the permanent guardian of the child is unable to properly care for the child,

c. the child has been abused or neglected while in the care of the permanent guardian, or

d. the permanent guardian of the child is deceased.

2. The court shall appoint a guardian ad litem for the child in any proceeding for modification or termination of a permanent guardianship.

B. 1. The court may modify or terminate the order granting permanent guardianship upon 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 home of the guardian, the court shall determine if the continuation of the child in the home of the guardian is contrary to the welfare of the child, and, if so, whether:

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 a 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 of Children and Family Services 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.

4. 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.

5. 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 may consider the parent or parents for custody of the child, 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-712. Judicial Determinations Regarding Contrary to the Welfare, Reasonable Efforts to Prevent Removal, and Reasonable Efforts to Finalize Permanency Plan

A. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and made on a case-by-case basis and so stated in the court order.

B.¹ If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made.

C.² Court orders that reference or cite the Choctaw Nation Children's Code or any other law to substantiate judicial determinations are not acceptable, even if the law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

¹⁻² Subsections editorially re-lettered.

History

CB-114-18, eff. Aug. 15, 2018.

PART 8. POST-DISPOSITIONAL PLACEMENT AND MISCELLANEOUS HEARINGS

Section 1-4-801. Review of Order Releasing Child from Custody

A. At any hearing including, but not limited to, hearings conducted pursuant to Section 1- 8-103 of this Title, where it is determined that a child in tribal custody will be released from tribalcustody, the prosecutor 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 tribal custody creates a serious risk of danger to the health or safety of the child.

B. Upon giving such notice, the court issuing the custody order in question shall stay the custody order pending the filing of an application and completion of review as provided in this section. The prosecutor or attorney for the child shall file with the Court of Appeals 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 expire.

C. Each application for review shall be assigned by the Chief Judge of the Court of Appeals to a judge of the Court of Appeals for review. 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 tribal custody creates a serious risk of danger to the health or safety of the child. The reviewing judge shall review the record of the hearing and any other evidence deemed relevant by the reviewing judge. At the

conclusion of the review, the reviewing judge shall issue findings of fact and conclusions of law and report them to the court issuing the custody order under review.

D. A finding by the reviewing judge that the order releasing the child from tribal 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 judge 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 release the stay, and the order shall be subject to appeal as provided in Section 1-5-101 of this Title. The failure of the court to issue the stay mandated by this section shall be subject to immediate mandamus to the Court of Appeals.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-802. Hearing to Determine Child's Placement or Release from Custody - Testimony

A. At any hearing pursuant to the provisions of the Choctaw Nation Children's Code for the purpose of determining the placement of a child or that a child in tribal custody is to be released from tribal custody, the court shall provide an opportunity to a representative of the Department of Children and Family 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 tribal custody.

B. The court, the prosecutor, or the attorneys for the parties may cross examine the representative of the Department, 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 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-803. Court Ordered Placement with Child and Family Services

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 Children and Family Services. Whenever a child is in the custody of the Department, the court shall not have the authority to order a specific placement of the child but shall have the authority to approve or disapprove a specific placement if it does not conform to statutory requirements and the best interests of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-804. Notice when Child in Custody of Department Moved to Another

Location - Time of Notice - Hearing

A. 1. The Department of Children and Family Services shall notify the post-adjudication review board, the prosecutor, the child's attorney, and 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.

2. The Department shall notify the foster family prior to movement of the child pursuant to the provisions of Section 1-4-805 of this Title.

3. The Department shall inform the guardian ad litem, if any, and the child's attorney of the specific location of the child.

B. The notification required by this section shall be made by the Department within a reasonable time after the Department is made aware of the need for movement, but in no event less than two (2) judicial days prior to movement unless an emergency exists. As used in this section, "emergency" means movement of a child that is:

1. Pursuant to an order of the court including, but not limited to, an order authorizing placement of a child with a parent or sibling;

2. Requested by the child-placing agency or foster parent of the child, and the request is for immediate removal of the child without delay or notice as provided by this section;

3. For emergency medical or mental health treatment;

4. For substantial noncompliance by a foster parent or child-placing agency with applicable placement standards and agreements such that child is in imminent danger; or

5. Due to a pending investigation of an allegation of abuse or neglect of a child by a fosterparent or child-placing agency or other person residing in the foster family home.

C. The court, on its own motion, may hold, or any party receiving notice pursuant to this section shall be granted, an informal hearing concerning the reasons and necessity for moving the child, if requested in writing, within five (5) days following the receipt of notice.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-805. Child in Custody of Department or Child-Placing Agency for More Than Three Months – Removal - Change of Foster Placement

A. If a child placed in the custody of a child-placing agency or in the custody of the Department of Children and Family Services by the court has resided with a foster parent for three (3) or more months:

1. Except in an emergency, the Department or child-placing agency shall:

a. give a minimum of five (5) judicial days' advance notice to the foster

parent and to the court before removing a child from such foster placement, and

b. at the time of such notification, provide the foster parent with a written statement of the reasons for removing a child;

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 that is planned or under consideration by the Department or child-placing agency;

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 attention of the court 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 attention of the court. The court may, in its discretion, stay a proposed change in placement until the informal placement review hearing is held; and

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.

B. When a child is placed in the custody of the Department or any child-placing agency, the Department or child-placing agency shall have discretion to determine an appropriate foster placement for the child. Except as provided in this section, the Department or child-placing agency may remove a child in its custody from a foster placement whenever the Department or child-placing agency determines that removal is in the best interests of the deprived child.

C. 1. In order to promote stability for foster children and limit repeated movement of such children from one foster placement to another, the 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 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 1-4-804 of this Title,

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, after notice of the removal of the child by the Department or the child-placing agency.

2. The objection shall be filed with the court by the foster parent and served on the Department or child-placing agency within five (5) judicial days after receipt of the notice from the 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 Department's or child-placing agency's stated reason for removal is due to an emergency. As used in this paragraph, "emergency" means a removal that is:

- 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,
- c. for emergency medical or behavioral health treatment,
- 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 in imminent danger, or
- 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.

4. The court shall conduct an informal placement review hearing within fifteen (15) 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 home of the objecting foster parent if the court finds that the placement decision of the Department or child-placing agency was arbitrary, inconsistent with the child's permanency plan or not in the best interests of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-806. Trial Home Reunification - Duties of Department of Children and Family Services - Termination

A. 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.

B. During the period of the trial home reunification, the Department of Children and Family Services shall:

- 1. Continue to have legal custody of the child, thereby permitting the Department to visit the child in the home of the parent, at school, in a child care facility, or any other setting the Department deems necessary and appropriate;
- 2. Continue to provide appropriate services to both the parent, if eligible, and the child during the period of the trial home reunification;
- 3. Terminate the trial home reunification, without court order or authorization, in order to protect the child's health, safety, or welfare and remove the child to foster care;

4. 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

5. Prepare a report for the court when the trial home reunification is terminated whether by the Department or court order which describes the circumstances of the child during the trial homereunification and recommends appropriate orders, if any, for the court to enter to provide for the safety and stability of the child.

C. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-807. Periodic Review Hearings - Review of Case Regarding Child Alleged or Adjudicated to be Deprived - Notice to Foster Parent, Pre-Adoptive Parent, or Relative - Findings

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 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 otherwise set forth in paragraph 2 of this subsection. A review hearing may be held concurrently with a permanency hearing.

2. When the Department of Children and Family Services 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.

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.

B. If a foster parent, pre-adoptive parent, or relative is currently providing care for a child, the Department shall give the foster parent, pre-adoptive parent, or relative notice of a proceeding concerning the child. A foster parent, pre-adoptive 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, pre-adoptive 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.

C. 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.

D. At each review hearing the court shall:

1. Determine and include the following in its orders:

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. the time frame that 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 1-4-809 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 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. The court shall inquire or cause inquiry to be made of the child regarding any proposed independent living plan,

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,

j. whether, in accordance with the safety or well-being of any child,

reasonable efforts have been made to:

(1) place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and

(2) provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together, and

k. whether, during the ninety-day period immediately prior to the date on which the child in the custody of the Department will attain eighteen (18) years of age, the Department and, as appropriate, other representatives of the child are providing the child with assistance and support in developing an appropriate transition plan that is personalized at the direction of the child, that includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect;

2. Consider placement options inside and outside of the Choctaw Nation for the child; and

3. 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 1-4-805 and 1-4-808 of this Title;

E. In making its findings, the court shall consider the following:

1. 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 the child while in an out-of-home placement;

2. The extent of progress that has been made toward alleviating or correcting the conditions that caused the child to be adjudicated deprived;

3. Whether the child should be returned to a parent or parents and whether or not the health, safety, and welfare of the child can be protected by a parent or parents if returned home; and

4. An appropriate permanency plan for the child, including concurrent planning when applicable, pursuant to Section 1-4-706 of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-808. Written Report for Review Hearing - Scope of Report - Child's Access to Counsel

A. The Department of Children and Family Services or the agency having supervision of the case or, if the child has been removed from the custody of the child's parents, the Department or the agency or child-placing agency having custody of the child shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of

review.

B. The 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 adjustment of the child thereto;
2. A report on the progress of the child in school and, if the child has been placed outside the child's home, the visitation exercised by the parents of the 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;
4. When the Department is responsible for supervision of the child or is the legal custodian of the child, a description of:
 - a. 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 would take to make the changes, and
 - c. services and assistance that have been offered or provided to the parent since the previous hearing and the services which are needed in the future;
5. A description of the placements of the child 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 efforts of the Department 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 home of the child, and whether it is the least restrictive, most family-like placement available;
9. A proposed timetable for the return of the child to the home or other permanent placement; and
10. Specific recommendations, giving reasons whether:
 - a. trial reunification should be approved by the court,

b. trial reunification should be continued to a date certain as specified by the court,

c. the child should remain in or be placed outside of the home of the parent or legal guardian of the child, or

d. the child should remain in the current placement when the permanency plan is other than reunification with the parent or legal guardian of the child.

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-809. Permanency Hearing Upon Finding that Reasonable Efforts to Prevent Removal of Child from Home or Reunify Child with Family not Required

A. At any time prior to or following the adjudicatory hearing the court, on its own motion or upon the motion of a party, may find that reasonable efforts to prevent the removal of a child 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 or legal guardian of the child, who is an infant, age twelve (12) months or younger, has abandoned the child;

2. The parent or legal guardian of the child 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 parental rights of a parent to the child's sibling have been terminated involuntarily.

B. The court shall conduct a permanency hearing within thirty (30) days of a determination by the court that any of the conditions specified in subsection A of this section exist. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-810. Child in Out-of-Home Care for Twelve Months or Longer – Meeting - Report Prior to Permanency Hearing - Proposed Permanency Plan

A. 1. When a child has been in out-of-home care for twelve (12) months or longer, the court may require that the Department of Children and Family Services facilitate a meeting held no later than thirty (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.

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 post-adjudication review board member, the guardian ad litem who has been appointed to the case, the child, and others as appropriate, and the 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 1-4-809 of this Title shall not be required to attend.

B. 1. Prior to a permanency hearing, the Department 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

2. The report shall include the proposed permanency plan by the Department, the efforts by the Department to effectuate the permanency plan for the child, address the options for the permanent placement of the child, and examine the reasons for excluding higher priority options; however, if a child has attained fourteen (14) years of age, the permanency plan developed for the child, and any revision or addition to the plan, shall be developed in consultation with the child and, at the option of the child, with not more than two (2) members of the permanency planning team who are selected by the child and who are not a foster parent of, or caseworker for, the child, except that the Department may reject an individual so selected by the child if the Department has good cause to believe that the individual would not act in the best interests of the child, and one (1) individual so selected by the child may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent standard to the child.

3. Unless a permanency hearing 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 post-adjudication 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.

C. The up-to-date and accurate report shall also contain, but not be limited to, the following information, if relevant:

1. Efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan;

2. Status of the child, including the child's behavioral, physical, and emotional health;

3. 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; and

4. A recommendation regarding whether the placement of the child should be extended and the reasons for the recommendation.

D. The child's attorney, the parents or parents' attorney, the foster parent, the post-adjudicatory review board member, the guardian ad litem, or the court appointed special advocate of the child may submit ~~an~~ additional informational reports to the court for review.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-811. Permanency Hearing

A. 1. The court shall conduct a permanency hearing 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:

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 1-4-809 of this Title.

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.

3. Subsequent permanency hearings shall 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 of Children and Family Services, or on the motion of the court, the initial and subsequent permanency hearings may be held more frequently.

4. 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.

B. A permanency hearing may be held concurrently with a dispositional or review hearing.

C. If a foster parent, pre-adoptive parent, or relative is currently providing care for a child, the Department shall give the foster parent, pre-adoptive parent, or relative notice of a proceeding concerning the child. A foster parent, pre-adoptive 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, pre-adoptive 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 permanency plan of the child and whether a change in the plan is necessary; the date by which the goal of permanency for the child is scheduled to be achieved, and whether the current placement of the child continues to be the most suitable for the health, safety, and welfare of the child. 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.

E. 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:

1. Reunification with the parent, parents, or legal guardian of the child where:
 - a. reunification can be expected to occur within an established time frame that is consistent with the developmental needs of the child, and
 - b. the health and safety of the child can be adequately safeguarded if returned home;
2. Placement for adoption after the rights of the parents have been terminated or after a petition has been filed to terminate parental rights;
3. Placement with a person who will be the permanent guardian of the child and is able to adequately and appropriately safeguard the health, safety, and welfare of the child; or
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 health, safety, and welfare of the child.

F. In addition to the findings required under subsection E of this section, 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;

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;

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; and

4. Whether reasonable efforts, in accordance with the safety or well-being of any child, have been made to:

a. place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and

b. provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together.

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.

H. In the case of any child for whom a planned permanent living arrangement is the permanency plan, the following case plan and case system review procedures shall apply:

1. At each permanency hearing, the Department shall document the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the agency to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children;

2. At each permanency hearing, the court or administrative body appointed or approved by the court conducting the hearing on the permanency plan for the child must:

a. Ask the child about the desired permanency outcome for the child,

b. Make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to:

(1) Return home;

(2) Be placed for adoption;

(3) Be placed with a legal guardian; or

(4) Be placed with a fit and willing relative.

3. At each permanency hearing, the Department shall document the steps it is taking to ensure that:

a. the child's foster family home or child care institution is following the reasonable and prudent parent standard; and

b. The child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-812. Eligibility of Foster Parent to Adopt - Factors to be Considered by Court

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.

B. If the child has resided with a foster parent for at least twelve (12) months, 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;

6. The age and preference of the child;

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-813. Agreements and Court Orders Permitting Post-Adoption Contact between Birth Relatives and the Child - Steps to Facilitate Ongoing Sibling Contact or Visitation

A. 1. When the court, pursuant to Section 1-4-812 of this Title, finds that a deprived child should be placed for adoption, nothing in the adoption laws of the Choctaw Nation of Oklahoma shall be construed to prevent the petitioners for adoption of the child from voluntarily entering into a written agreement with the birth relatives, including a birth parent, to permit post-adoption contact between the birth relatives and the child. The post-adoption contact agreement shall be issued by the court in 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.

2. For purposes of this section, “birth relative” includes members of the extended family, who shall be a person who has reached eighteen (18) years of age and who is the 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.

3. If a child who is separated from a sibling 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 post-adoptive contact between the child who is the subject of a petition for adoption and any siblings of that child.

4. The terms of the post-adoption 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, and

d. provisions for the sharing of information about the child.

5. The terms of any post-adoption 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.

B. 1. A post-adoption agreement 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.

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 twelve (12) years of age or older, and, if the child is in the custody of the Department of Children and Family Services, a representative of the Department. The child shall be represented by an attorney for purposes of consent to the post-adoption agreement.

4. The post-adoption 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 the post-adoption 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 tribe.

D. 1. Although the entry of the decree of adoption terminates the jurisdiction of the juvenile court over the child, the enforcement of the post-adoption agreement and subsequent order shall be under the continuing jurisdiction of the court granting the petition for adoption.

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.

3. 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.

E. A post-adoption agreement may be modified or terminated only if the court finds that the modification or termination is necessary to serve the best interests of the child, and is agreed to by all parties, including the child if the child is twelve (12) years of age or older at the time of the requested modification or termination.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-814. Modification of Decrees or Orders

Any decree or order made pursuant to the provisions of the Choctaw Nation Children's Code may be modified by the court at any time; provided, however, that an order terminating parental rights shall not be modified.

History
CB-114-18, eff. Aug. 15, 2018.

PART 9. TERMINATION OF PARENTAL RIGHTS

Section 1-4-901. Petition or Motion by prosecutor or Child's Attorney – Duty of Prosecutor

A. A petition or motion for termination of parental rights may be filed independently by either the prosecutor or the attorney of a child alleged to be or adjudicated deprived.

B. A petition or motion for termination of parental rights shall be filed by the prosecutor for those petitions or motions required to be filed pursuant to the provisions of Section 1-4-902 of this Title.

C. If a child's attorney files a petition or motion for the termination of the parental rights of the parents of the child, the prosecutor shall join in the petition or motion for those petitions or motions required to be filed by the prosecutor pursuant to the provisions of Section 1-4-902 of this Title, unless an exception to filing exists.

D. Once a petition or motions for termination of parental rights has been filed by the prosecutor, the Department shall concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-4-902. Conditions Requiring Prosecutor to File Petition or Motion for Termination of Parent-Child Relationship

A. The prosecutor 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:

1. Prior to the end of the fifteenth (15) month when a child has been placed in foster care by the Department of Children and Family 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. No later than sixty (60) days after a child has been judicially determined to be an abandoned infant;

3. 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 any child, or

c. committed a felony assault that has resulted in serious bodily injury to the child or to any child.

B. If any of the following conditions exist, the prosecutor 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, 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 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,

b. the child, who is twelve (12) years or older, objects to the termination of the parent-child legal relationship,

c. the foster parents of the child 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 tribe has not provided to the family of the child, consistent with the time period in the tribe case plan, services that the tribe 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-903. Adoption as a Permanency Plan - Good Cause not to Terminate Parental Rights

If the court finds from the information presented by the Department of Children and Family Services that the permanency plan for the child should be adoption, the court may order the prosecutor to show cause why it should not file a petition or motion to terminate the parent-child legal relationship pursuant to this section. 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 tribe has not provided to the family of the child, consistent with the time period in the tribal case plan, such services as the tribe 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-904. Termination of Parental Rights in Case Involving Petition for Deprived Status of Child

A. A court shall not terminate the rights of a parent to a child unless:

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.

B. The court may terminate the rights of a parent to a child based upon the following legal grounds:

1. 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.

2. A finding that a parent who is entitled to custody of the child has abandoned the child;

3. A finding that the child is an abandoned infant;

4. A finding that the parent of a child:

a. has voluntarily placed physical custody of the child with the Department of Children and Family 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:

a. the parent has failed to correct the condition which led to the deprived adjudication of the child, and

b. the parent has been given at least three (3) months to correct the condition;

6. A finding that:

a. the rights of the parent 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 parent who does not have custody of the child has, for at least six (6) out of the twelve (12) months immediately preceding the filing of the petition for termination of parental rights, willfully failed or refused or has neglected to contribute to the support of the child:

a. as specified by an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. where an order of child support does not exist, according to the financial ability of the parent to contribute to the child's support.

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 finding that the parent has been convicted in a court of competent jurisdiction in any tribal, state or federal court of any of the following acts:

a. permitting a child to participate in pornography,

b. rape, or rape by instrumentation,

c. lewd molestation of a child under sixteen (16) 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. That the parent has abused or neglected the child or a sibling of the child or failed to protect the child or a sibling of the child from abuse or neglect that is heinous or shocking;

10. Finding that the parent has previously abused or neglected the child or a

sibling of the child or failed to protect the child, or a sibling of the child from abuse or neglect, and the child or a sibling of the child has been subjected to subsequent abuse;

11. A finding that the child was conceived as a result of rape perpetrated by the parent whose rights are sought to be terminated;

12. A finding that the parent whose rights are sought to be terminated is incarcerated, and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others:

- a. the duration of incarceration and its detrimental effect on the parent/child relationship,
- b. any previous convictions resulting in involuntary confinement in a secure facility,
- c. the parent's history of criminal behavior, including crimes against children,
- d. the age of the child,
- e. any evidence of abuse or neglect or failure to protect from abuse or neglect of the child or siblings of the child by the parent,
- f. the current relationship between the parent and the child, and
- g. the manner in which the parent has exercised parental rights and duties in the past.

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 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. allowing the parent to have custody would cause the child actual harm or harm in the near future.

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.

A finding that a parent has a 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 parental rights; and

14. 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 the conditions which led to the determination of the initial deprived child.

C. An order directing the termination of parental rights is a final appealable order.

D. 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 Choctaw Nation Adoption Code.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-905. 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 shall be served upon the parent who is the subject of termination proceeding by personal delivery, by certified mail, or by publication as provided for in Section 1-4-304 of this Title.

2. The notice shall 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 subsection B of Section 1-4-906 of this Title.

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 termination of his or her parental rights.

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 subsection A of this section files a motion to vacate the order within thirty (30) days after the order is filed with the court clerk.

2. Notice of the motion shall be given to all the parties and their attorneys and the court shall set the matter for hearing expeditiously.

3. 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.

4. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-906. Effect of Termination of Parental Rights

A. The termination of parental rights terminates the parent-child relationship, including:

1. The parent's right to the custody of the child;
2. The parent's right to visit the child;
3. The parent's right to control the child's training and education;
4. The necessity for the parent to consent to the adoption of the child;
5. The parent's right to the earnings of the child; and
6. 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 order terminating parental rights shall indicate that the duty of the parent to support his or her minor child will not be terminated 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-907. Placement with Individual or Agency - Authority to Consent to Adoption - Effect of Final Decree of Adoption

If the court terminates the rights of a parent and places the child with an individual or agency, the court may vest in such individual or agency authority to consent to the adoption of the child. Provided, that when the court places the child with the Department of Children and Family Services, 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 the child, vest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate upon a final decree of adoption.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-908. Permanency Hearing - Continued Jurisdiction over the Child

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.

B. The failure of parental rights to be 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-4-909. Request by Child for Reinstatement of Terminated Parental Rights

A. A child may, by application, request the court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

1. The child was previously found to be a deprived child;
2. The parent's rights were terminated in a proceeding under the Choctaw Nation Children's Code;
3. The child has not achieved his or her permanency plan within three (3) years of a final order of termination; and
4. The child is at least fifteen (15) years old at the time the application is filed.

B. A child shall be represented during the proceeding and shall be provided independent counsel.

C. The application shall be signed by the child as well as the child's attorney.

D. 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.

E. The court shall cause prior notice to be given to the Department of Children and Family Services, 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:

1. The former parent of the child whose parental rights are the subject of the application;
2. The current foster parent or relative guardian of the child;
3. The guardian ad litem of the child, if any; and
4. The child's tribe, if applicable.

F. The application of the child shall be dismissed if the parent cannot be located.

G. The court shall conditionally grant the application 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:

1. 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;
2. The age and maturity of the child, and the ability of the child to express his or her preference;
3. Whether the reinstatement of parental rights will present a risk to the health, safety, or welfare of the child; and
4. Other material changes in circumstances, if any, that may have occurred which warrant the granting of the application.

H. In determining whether the child has or has not achieved 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.

I. 1. If the court conditionally grants the application under subsection G of this section, the case shall be continued for six (6) months and a temporary order of reinstatement of parental rights 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.

2. If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six month (6) 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.

J. The court shall hold a hearing after the child has been placed with the parent for six (6) 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.

K. 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.

L. This section is retroactive and 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.

M. The prosecutor, 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 prosecutor, the Department, or its employees concerning the original order of termination of parental rights.

History

CB-114-18, eff. Aug. 15, 2018.

CHAPTER V. APPEALS

Section 1-5-101. Appeals

A. Any interested party aggrieved by any order or decree may appeal to the Court of Appeals pursuant to Section 1-5-103 of this Title and the rules of the Court of Appeals of the Choctaw Nation of Oklahoma.¹

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 Court of Appeals shall so order, except as provided in Section 1-4-801 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.

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-5-102. References to Child in Appellate Opinions

In Opinions of the Court of Appeals of the Choctaw Nation of Oklahoma in proceedings including, but not limited to, deprived, adoption, paternity proceedings, and other proceedings under this Title, the initial of the child's surname shall be used rather than the name of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-5-103. Time for Filing Petition - Completion of Record - Briefing Schedule - Expedited Adjudication of Appeal

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 Court of Appeals within thirty (30) days of the order appealed from. The record on appeal shall be completed within sixty (60) days from the date of the order.

B. The briefing schedule is established as follows:

1. Appellant's brief in chief shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Court of Appeals;

2. Appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed; and

3. Appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed.

C. 1. Adjudication of the appeals described in this section shall be expedited by the Court of Appeals, 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.

History

CB-114-18, eff. Aug. 15, 2018.

CHAPTER VI. CHILDREN'S RECORDS

Section 1-6-101. Duty to Keep Records of Cases Brought before the Court - Definitions

A. The court shall make and keep records of all cases brought before it. The court may devise and cause to be printed forms for records and such other papers as may be required.

B. As used in the Choctaw Nation 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 all records, other than adoption records, including, but not limited to, agency, law enforcement, and prosecutor'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 Choctaw Nation Children's 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 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. safety analysis records that have been prepared and obtained in response to a report of alleged child abuse or neglect and include assessment reports and reports to the prosecutor with all supporting documentation attached and any addendums;

4. "Prosecutor's records" means any records prepared or obtained by an office of a prosecutor 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 child in need of supervision, or a minor in need of treatment. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. "Non-Directory 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 federal and tribal law;

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 family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies, even if attached to court reports prepared by the Department; and

9. “Participating agency” means any public or private agency that has entered into a contract or an interagency agreement for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-102 Confidential Records - Authorization for Inspection, Disclosure, Correction, or Expungement of Records - Fees

A. Except as provided by this section and except as otherwise specifically provided by tribal or 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. Prosecutor’s records;
4. Law enforcement records;
5. Non-directory 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 Choctaw Nation Children’s Code.

C. Except as authorized by tribal or federal laws pertaining to education records, medical records, drug or 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. A subpoena or subpoena *duces tecum* purporting to compel testimony or disclosure of such information or record shall be invalid.

D. 1. In a proceeding where the child custody or visitation is at issue, the safety analysis records of the Department 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 the records.

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 shall be kept confidential and disclosed only to the movant, the attorneys of the movant, those persons employed by or acting on behalf of the movant and the attorneys of the movant 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 attorney of the child, 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 substantially in the following form:

CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

NOW on this__day of_, 20___, the Court finds that child custody orvisitation is at issue in the above styled and numbered proceeding and the disclosure of the safety analysis records of the Choctaw Nation of Children and Family Services pursuant to Section 1-6- 102 of this Title is necessary and relevant to the court's determination of the child's best interests. The Court therefore orders as follows:

a. the Choctaw Nation Department of Children and Family Services ("Department"or "DCFS") shall produce a copy of its safety analysis records to this court on or before _____ day of_____, 20_.

b. 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,

c. all information contained in the safety analysis records of the Department is confidential under Choctaw law and shall be disclosed only to the parties, the attorneys of the parties, and those persons employed by or acting on behalf of the parties, and the attorneys of the parties whose aid is necessary to the prosecution or defense of the child custody or visitation issue,

d. 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."

e. 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.

f. 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 Department records and which belong to any person or entity is strictly prohibited.

g. any violation of this order shall be subject to prosecution for contempt of court.

IT IS SO ORDERED this__day of_____, 20__.

4. This subsection shall not apply to:
 - a. deprived child proceedings brought pursuant to the Choctaw Nation 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 safety analysis records of the Department 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 subsection 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 subsection which purports to require the Department to produce all agency records shall be deemed to require only the production of the safety analysis records of the Department.
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 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 subsection or other law, confidential records may be inspected, released, disclosed, corrected, or expunged only by the procedure set forth in subsection E of this section.
 - E. 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 of necessity pursuant to the following procedure:
 1. 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 petition or motion that does not contain the required specificity or detail may be subject to dismissal by the court;

2. Upon the filing of the petition or motion, the court shall set a date for a hearing and shall 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 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. At the hearing, should the court find that a 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 discretion of the court; and

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.

F. The court may, for good cause shown, prohibit the release of such confidential records or 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 this section.

G. 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 subsection D of this section.

H. Nothing in 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 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 Choctaw Nation Adoption Code;¹

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 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 Children and Family 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 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;

8. Prohibiting the Department of Children and Family 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;

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 the safety of students; or

10. Prohibiting the Department from obtaining, without a court order, non-directory education records pertaining to a child in the legal custody of the Department.

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-103. Inspection of Juvenile Court Records and Department of Children and Family Services Agency Records without Court Order

A. Juvenile court records and Department of Children and Family 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:

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. A prosecutor, United States Attorney, or Attorney General of the Choctaw Nation or of any state, tribe, or of the federal government 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;

3. 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;

4. Employees of juvenile bureaus in the course of their official duties pursuant to

this title, and employees of the Department of Children and Family Services in the course of their official duties;

5. Employees of a law enforcement agency of the Choctaw Nation or of any state, tribe, or military enclave, or of the federal government and employees of a child protective service of any state, tribe, or military enclave, or of the federal government 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;

6. 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;¹ 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,

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.

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 1-6-101 of this Title;

7. The Chief or to any person the Chief designates, in writing;

8. Any federal official of the United States Department of Health and Human Services;

9. Any member of the Tribal Council approved in writing by the Speaker of the Tribal Council;

10. 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;

11. An employee of any tribal, state, or federal corrections, or law enforcement agency in the performance of the official duties of the employee 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

12. An employee of a tribal agency or the agency of any state in the performance

of the official duties of the employee 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.

B. In addition to the persons listed in subsection 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 1-1-105 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 1-4-306 of this Title;

2. Members of post-adjudication review boards, the Child Death Review Board,² and multidisciplinary personnel if such boards, agencies, departments, or teams are established pursuant to the provisions of the Choctaw Nation Statutes. In addition to juvenile court records, members of such post-adjudication 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 Children and Family Services or other public or private agency or individual having court-ordered custody or physical custody pursuant to Department 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; and

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.

C. In addition to the persons and entities named in subsection A of this section, Department of Children and Family 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:

1. Post-adjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;³

2. Any 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 the disclosure;

3. Members of multidisciplinary teams or multidisciplinary personnel designated by the Department, 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 or the parents, legal guardian, foster parent, custodian, or other family members of the child;

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 the research is employed by the Choctaw Nation of Oklahoma or is under contract with the Choctaw Nation of Oklahoma and is authorized by the Department 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 the 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; and

7. A medical examiner when such person is determining the cause of death of a child.

D. The Department shall promulgate policies and procedures restricting use of or disclosure of information concerning individuals assisted, directly connected with:

1. the administration of the Title IV-E plan or any of the plans or programs under Parts A, B or D of Title IV or under Titles I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX or XX, or the supplemental security income program under Title XVI;

2. the administration of any other Federal or federally assisted program which provides assistance (in-cash or in-kind) or services directly to individuals on the basis of need;

3. any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plan or program;

4. any audit or similar activity conducted in connection with the administration

of any such plan or program by any governmental agency authorized by law to conduct such audit or activity;

5. the disclosure of information to appropriate authorities with respect to known or suspected child abuse or neglect;

6. the disclosure of information to the appropriate authorities with respect to children or youth identified as being a sex trafficking victim; and

7. the disclosure of information to appropriate authorities with respect to children who are missing or abducted.

¹ 25 U.S.C. § 1901, et seq.

²⁻³ May refer to the Oklahoma Child Death Review Board created in the Child Death Review Board Act, 10 Okla. Stat. § 1150, et seq.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-104. Access to Juvenile Court Record including more than one Child

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-105. Cases Involving Death or Near Death of a Child—Release of Certain Information to the 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. When a person responsible for a 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 is served by public disclosure of certain information concerning:

1. The circumstances of the investigation of the death or near death of the child; and
2. Any other investigations concerning that child, or other children while living in the same household, within:
 - a. three (3) years of the death or near death, and
 - b. one (1) year after the death or near death.

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 Children and Family Services, the prosecutor, 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 prosecutor and any subsequent action taken by the prosecutor,
- 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. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-106. Social Records not to be Filed in Court Record unless Ordered by Court - Confidentiality

Social records¹ as defined by the Choctaw Nation Children's Code 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 1-6-103 of this Title.

¹ See Section 1-6-101 (B)(8)

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-107. Confidentiality of Reports and Records – Penalties for Violations of Confidentiality

A. The reports required by Section 1-2-101 of this Title and all other information acquired pursuant to the Choctaw Nation Children’s Code shall be confidential and may be disclosed only as provided by this Code, applicable tribal or federal law, regulation, or court order.

B. The confidential records and information that are authorized to be disclosed pursuant to this Chapter 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 Chapter 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.

C. The disclosure of any confidential records or information made by the Department of Children and Family Services pursuant to law or 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 tribal and federal law.

D. 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-108. Maintenance of Court and Agency Records Regarding Deprived Children

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-6-109. Foster Care Maintenance System

The Department shall establish and maintain a Foster Care Maintenance System that will provide the status of any child within foster care currently (or within the last twelve (12) months), and shall:

1. record and monitor the child’s demographic information, location, and goals for their placement,
2. maintain current and updated record of the child’s health and education, as provided in the Individualized Service Plan and ensure a copy of such record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the

child in foster care, and is supplied at no cost at the time the child leaves foster care, if the child is leaving foster care by reason of having attained the age of majority,

3. ensure the Department visits each child and conducts an administrative review of that child's case at least every six (6) months,

4. ensure the Department provides the child that is fourteen (14) years old with:

a. Any consumer report (as defined in any Section 603(d) of the Fair Credit Reporting Act)¹ pertaining to the child each year until the child is discharged from care, and provide assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report;

b. A document that describes the rights of the child with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation; and

c. A signed acknowledgement by the child that the child has been provided with a copy of the documentation and that the rights contained in the document have been explained to the child in an age-appropriate way.

5. prior to a child reaching the age of majority:

a. ensure the child has an official or certified copy of the United States birth certificate of the child, a social security card issued by the Commissioner of Social Security, health insurance information, copy of the child's medical records, and a driver's license or identification card issued by a State or Tribe in accordance with the requirements of section 202 of the REAL ID Act of 2005,²

b. ensure that during the 90-day period immediately prior to the date on which the child will attain eighteen years of age, whether during that period foster care maintenance payments are being made on the child's behalf, or the child is receiving benefits or services under Section 477 of Title IV E of the Social Security Act (42 U.S.C. 678 et seq.), a caseworker on the staff of the Department, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child, if the child becomes unable to participate in such decisions, and the child does not have, or does not want, a relative who would otherwise be authorized to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under Choctaw Nation of Oklahoma law, and is as detailed as the child may elect.

¹ 15 U.S.C. §1681., et seq.

² See 49 U.S.C. §30301 (Note); Section 202 of P.L. 109-13 (May 11, 2005).

History

CB-114-18, eff. Aug. 15, 2018.

CHAPTER VII. PERSONS OR AGENCIES RECEIVING CUSTODY - RIGHTS AND DUTIES

Section 1-7-101. Persons, Institutions, or Agencies Receiving Custody - Rights and Duties

A. This section applies to persons, institutions, or agencies, other than the Department of Children and Family Services, which receive custody of a child pursuant to a court order as provided by the Choctaw Nation Children's Code.

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.

2. The person, institution, or agency may provide or arrange for the emergency admission, inpatient evaluation, or inpatient treatment of a child only pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.¹ Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient behavioral health services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to such child, as necessary and appropriate, in the absence of a specific court order for such services.

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 behavioral health care or treatment, to the person, institution, or agency 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 medical care, as determined by competent medical authority.

C. 1. If the child is placed in the custody of a person, institution, or agency, whether in emergency, temporary, or permanent custody, the person, institution, or agency 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.

2. The person, institution, or agency 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.

¹ Not yet codified.

History
CB-114-18, eff. Aug. 15, 2018.

1-7-102. Department of Children and Family Services to Care for Deprived Children

A. It shall be the responsibility of the Department of Children and Family 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 Chapter IX of this Code.¹

¹Section 1-9-101, et seq. of this Title.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-7-103. Additional Duties and Powers of Department

A. In addition to the other powers and duties prescribed by law, the Department of Children and Family Services shall have the power and duty to:

1. Provide for the care and treatment of children taken into protective or emergency custody pursuant to the provisions of the Choctaw Nation Children's Code and placed in the Department's custody by an order of the court.

In providing for the temporary care and treatment of such children the Department shall:

a. place the children in a children's shelter, foster 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 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;

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 rules promulgated by the 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 to a hospital or behavioral health

facility as provided in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;¹

d. provide outpatient behavioral health care and as prescribed by a qualified behavioral health professional;

e. 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;

f. provide or prescribe treatment services for the family of an alleged deprived child placed in the emergency custody of the Department if such services are voluntarily requested, and the family is otherwise eligible under applicable law and rules promulgated by the Department of Children and Family Services for the services offered; and

g. provide medical care necessary to preserve the health of the child in accordance with the provisions of Chapter III of this Code;² and

2. Provide for the care and treatment of an adjudicated deprived child placed in the temporary custody of the Department by an order of the court. In providing for such care and treatment, the Department:

a. shall review and assess each child 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. In making the review, the Department may use any facilities, public or private, which aid in the assessment,

b. shall develop and implement an individualized service plan for each child in accord with the requirements of Section 1-4-704 of this Title,

c. may return a deprived child to the home of the parent or legal guardian from whom the child was removed with prior approval of the court, or place the child in the home of a noncustodial parent, in a foster home, in a children's shelter, in a group home, in an independent living program, or in any licensed facility established for the care of children;

d. may admit a deprived child to a hospital or behavioral health facility as provided in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;³

e. may provide outpatient behavioral health care and treatment as prescribed by a qualified behavioral health professional;

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 rules promulgated by the Department; and

g. provides medical care necessary to preserve the health of the child in accordance with the provisions of Chapter III of the Choctaw Nation Children's Code.⁴

B. The Department may move a child in its custody from any authorized placement to another authorized placement if consistent with the needs of the child or as may be required in an emergency, subject to the provisions of Section 1-4-804 of this Title. The Department, in placing a child who has reentered foster care, shall consider previous foster placements as well as a kinship foster home placement if available. The placement shall be consistent with the best interests of the child.

C. The Department shall assure that any child who has attained the minimum age for compulsory school attendance and is eligible for a foster care maintenance payments under Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq., is:

1. Enrolled in an institution which provides elementary or secondary education as determined under the law of the tribe or other jurisdiction in which the institution is located;

2. Instructed in elementary or secondary education in any legally authorized education program;

3. In an independent study elementary or secondary education program in accordance with the law of the tribe or jurisdiction in which the program is located, which is administered by the local school or school district; or

4. Incapable of attending school on a full-time basis due to a documented medical condition supported by regular updates.

D. 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 of the United States. Permission for school or organizational activities requiring consent and not prohibited by Department rule may be given by the foster parent.

E. 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.

F. The Department may participate in federal programs relating to abused and neglected children and services for such children; and apply for, receive, use, and administer federal funds for such purposes.

G. The Department shall receive interest earnings on the investment by the tribal 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.

^{1,3} Not yet codified.

^{2,4} Section 1-3-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-104. Information to Accompany Child in Out-of-Home Care - Passport Program

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 Children and Family 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 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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-7-105. Rules, Regulations, Policies and Procedures Regarding Children in Department Custody

A. The Department of Children and Family Services shall promulgate written rules, policies, and procedures governing the operation of those facilities operated by or under contract with the Department wherein children may be placed, including but not limited to foster family homes and child care institutions.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals or 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 his or her own clothing or individualized clothing;
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;
5. A child shall have a right to communicate and to visit with his or her family on a regular basis, and to communicate with persons in the community provided the communication or visitation is in the best interests of the child;
6. A child shall have timely access to medical care as needed;
7. A child in the custody or care of the Department shall be provided access to an education including teaching, educational materials, and books;
8. A child shall have a right to access to the child's attorney;
9. A child shall be afforded a grievance procedure, including an appeal procedure;
10. A child's behavioral health needs shall be met, protected, and served through provision of guidance, counseling, and treatment programs, staffed by competent, professionally

qualified persons; and

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:

- 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.

12. At least one (1) official shall be designated to be the caregiver, with respect to any child placed at the child care institution, who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally-appropriate activities, and who is provided with training in how to use and apply the reasonable and prudent parent standard in the same manner as prospective foster parents are provided the training;

13. Any foster parent, or other entity providing for the care of a child, under contract with the Department shall be civilly liable to the Nation and the child for failing to provide care of a reasonable and prudent parent. Such liability may only be waived on a case-by-case basis for non-safety standards (as determined by the Department) in relative foster family homes for specific children in care;

C. Any contract or agreement entered into by the Department for the residential care and treatment of children in the custody of the Department shall provide that the contractor comply with the provisions of subsections A and B of this section.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-106. Foster Care Placement - Kinship Relationship - Treatment Needs of Child - Case Plan Goals

A. When a child is placed into foster care, the child shall be placed 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.

B. A placement shall be made that meets the treatment needs of the child and supports the case plan goals for that child and the family of that child, and is in the best interests of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-107. Placement of Siblings in the Same Home – Contact or Visitation for Separated Siblings

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-108. Liability for Costs and Expenses in Excess of Funding for Foster Care Services

Neither the Department of Children and Family Services nor a child-placing agency shall 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-109. Foster Placement - License or Authorization

A. Except as otherwise provided by this section, no child in the custody of the Department of Children and Family Services shall be placed with any foster placement unless the foster placement:

1. Has a current license or authorization issued pursuant to federal, tribal, or state law; or
2. Meets licensing standards as required by federal, tribal, or state law and is otherwise approved for foster care by the tribal 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 federal, tribal, or state law, and is otherwise approved by the tribal 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 other Indian tribes.

D. Before a child in foster care is placed with prospective foster parents, the prospective foster parents shall be adequately prepared with the appropriate knowledge and skills to provide for the needs of the child. As necessary, such preparation is continued after placement of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-110. Placement of Deprived child in Foster Care - Best Interests of Child - Child's Preference

In determining placement of a deprived child in foster care:

1. The Department of Children and Family Services or the court, if the court does not place the child with the Department, and any child-placing agency shall be governed by the best interests of the child; and
2. The 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, 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, 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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-7-111. Prerequisites for Placement of Child in Foster Home and for Court Awards of Custody to Individual or Child-Placing Agency other than Department

- A. 1. Except as otherwise provided by law, the Department of Children and Family Services shall not place a child in a 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 Choctaw Nation Children's Code, and
 - c. a check of any child abuse registry maintained by an Indian tribe or 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 tribe 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 the Choctaw Nation of Oklahoma for at least five (5) years immediately preceding placement. The director of such tribal agency or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person from being fingerprinted.

2. a. the Department 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 Choctaw Nation Tribal Police,

b. courts and child-placing agencies may request the Department to obtain from the Choctaw Nation Tribal Police, a national criminal history records search based upon submission of fingerprints for foster parents and other persons requiring such search pursuant to the Choctaw Nation Children's Code. Any fees charged for such searches shall be paid by the requesting entity.

c. the Department shall contract with the Choctaw Nation Tribal Police, the Oklahoma State Bureau of Investigation, or some other suitable federal, state, or tribal governmental agency to obtain national criminal history records searches based upon submission of fingerprints.

d. (1) if the Department 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 Choctaw Nation Tribal Police, the Oklahoma State Bureau of Investigation, or some other suitable federal, state, or tribal governmental agency. 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.

B. A child-placing agency shall not place a child who is in the custody of the agency in a foster home until completion of a foster parent eligibility assessment 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 Choctaw Nation Children's Code and a check of any child abuse registry maintained by an Indian tribe or any 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 the Choctaw Nation of Oklahoma for at least five (5) years immediately preceding the placement.

C. 1. Whenever a court awards custody of a child to an individual or a child-placing agency other than the Department 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.

2. A child-placing agency other than the Department shall, within thirty (30) days of placement, provide for an assessment of the child for the purpose of establishing an appropriate individualized service plan for the child. The court shall require the individualized service plan to be completed in substantially the same form and with the same content as required by the Choctaw

Nation Children's Code for a deprived child or as required by the Choctaw Nation Juvenile 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. When the court awards custody of a child to an individual or a child-placing agency as provided by this section, 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 an individualized service plan, and the medical examination required by this section.

E. Appropriate foster care maintenance payments shall be made when a child in custody of the Department of Children and Family Services and is placed in a foster family home or child care institution not administered by an agency of the Choctaw Nation of Oklahoma.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-112. Voluntary Foster Care Placement - Procedures

A. The Department of Children and Family Services 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.

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 anytime 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 that shall:

- a. bind all parties to the agreement,
- b. record the legal status of the child, and
- c. specify the rights and obligations of the parents or guardians, the child, and the Department while the child is in placement.

4. A period of voluntary foster care placement pursuant to the provisions of this section shall not exceed 180 days unless a court order provides that it is in the best interest of the child.

5. Except as otherwise provided by this section or Section 1-4-904 of this Title, 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 Choctaw Nation Children's Code.

6. The Department shall promulgate rules for the purpose of assessing parents for the full or partial cost of voluntary foster care placement.

7. The Department shall provide for any voluntary foster care placement cost of any dependent child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-113. Required Visitations by Department of Children and Family Services or Placement Agency

The Department of Children and Family Services or child-placing agency shall visit each foster child a minimum of one 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 whenever possible and if indicated, the child may be interviewed alone without the foster parent present.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-7-114. Costs of Foster Parent Eligibility Assessment and National Criminal History Records Search

The Department of Children and Family Services 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 a medical examination only for the children placed in the custody of the tribal agency. The tribal agency may provide for reimbursement of such expenses, costs, and charges so incurred pursuant to the Choctaw Nation Children's Code or the Choctaw Nation Juvenile Code, as applicable.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-7-115. Removal from Home Due to Allegations of Abuse or Neglect - Emergency Placement

A. When it is necessary for a child to be removed from the home due to allegations of child abuse or neglect, the Department of Children and Family Services may consider whether another home would be suitable for the child as an emergency placement pending further court proceedings. In determining the suitability of the emergency placement home, the Department may elect to contract or otherwise collaborate with local law enforcement agencies to perform a name-based state and federal criminal history records check followed by fingerprint verification in accordance with the procedures set forth in 28 C.F.R., Section 901 et seq., and this section.

B. When a child is taken into protective custody by a law enforcement officer or when the court places emergency custody of a child with the Department pursuant to the provisions of the Choctaw Nation Children's Code and an emergency placement for the child is identified, a preliminary Federal Bureau of Investigation Interstate Identification Index name-based check of the records of criminal history of the members of the emergency placement household shall be conducted prior to the placement of the child in the home.

1. When a child is in the emergency custody of the Department, the Department or its approved designee may conduct a preliminary name-based check of certain records, including full orders of protection and outstanding warrants, of each person over the age of eighteen (18) years residing in the identified potential emergency placement home where the child may be placed to determine whether any adult member of the household has been arrested for or convicted of any crime.

2. When the child is in protective custody of law enforcement or when requested by the Department or its approved designee, a local law enforcement agency shall immediately conduct the same type of criminal records search as described in paragraph 1 of this subsection and shall provide the Department with a verbal response of each person's criminal history and whether any orders of protection or outstanding warrants exist.

C. 1. Following a name-based criminal records check conducted pursuant to this section, and within five (5) business days after the child has entered the emergency placement home, all persons residing in the home who are over the age of eighteen (18) years and those persons who are under the age of eighteen (18) years and have been certified as an adult for the commission of a crime, shall submit a full set of fingerprints to the Department and provide written permission authorizing the Department to forward the fingerprints to the Choctaw Nation Tribal Police, the Oklahoma State Bureau of Investigation, or some other suitable federal, state, or tribal governmental agency or department for submission to the Federal Bureau of Investigation for criminal records report.

2. The Department shall forward the fingerprints to the Choctaw Nation Tribal Police, the Oklahoma State Bureau of Investigation, or some other suitable federal, state, or tribal governmental agency or department within fifteen (15) calendar days after the results of the

preliminary name-based records check are received. The failure of any person to submit to a name-based criminal records check shall result in the immediate removal of the child from the emergency placement home.

D. The costs associated with fingerprinting requirements of this section shall be paid by the Department.

History

CB-114-18, eff. Aug. 15, 2018.

CHAPTER VIII. MISCELLANEOUS PROVISIONS

Section 1-8-101. Education and Training Requirements - Judicial Personnel, Prosecution Officials, Public Defenders and Attorneys

A. 1. The Court of Appeals may establish by rule, education and training requirements for judges and referees who have juvenile docket responsibility. Rules may 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, and other similar topics.

2. All judges having juvenile docket responsibility shall attend at least twelve (12) hours of training in such courses each calendar year relating to the topics described in paragraph 1 of this subsection.

B. The Court of Appeals may establish by rule, education and training requirements for any prosecutor, public defender, court-appointed or retained attorney, or attorney employed by or under contract with the district court whose duties include juvenile docket responsibility. Rules may include, but not be limited to, the topics described in paragraph 1 of subsection A of this section. These education and training requirements may be accomplished through a collaborative effort between the judiciary and others with juvenile docket responsibilities.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-102. Court-Appointed Special Advocate - Training - Criminal History Records Search - Immunity from Civil Liability

A. Any court-appointed special advocate (CASA) available for appointment pursuant to the Choctaw Nation Children's Code or the Choctaw Nation 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.

B. No court-appointed special advocate shall be assigned a case before:

1. Completing a training program in compliance with nationally documented Court-Appointed Special Advocate standards. Documentation of training shall be submitted

annually by local court-appointed special advocate programs to the Oklahoma Court-Appointed Special Advocate Association; and

2. Be approved by the local court-appointed special advocate program, which will include appropriate criminal background checks as provided in subsection C of this section.

C. 1. Each local court-appointed special advocate program shall require a criminal history records search conducted by the Choctaw Nation Tribal Police, the Oklahoma State Bureau of Investigation, or some other governmental agency, and any other background check requirements as set forth in Oklahoma Court-Appointed Special Advocate Association state standards for local programs, for any person making application to become a court-appointed special advocate volunteer or to be employed by the local court-appointed special advocate program.

2. If the prospective court-appointed special advocate volunteer or employee of the local court-appointed special advocate program has lived in Oklahoma for less than twelve (12) months, a criminal history records search shall also be obtained from the criminal history state repository of the previous state of residence.

3. The Oklahoma Court-Appointed Special Advocate Association shall pay the fee for the criminal history records search provided in this subsection.

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-103. Referees

A. The district judge with the consent of the Court of Appeals 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. Referees shall be licensed to practice law in the Choctaw Nation and shall be specially qualified for their duties.

B. All referees are subject to the administrative authority and assignment power of the district judge. The duties and powers of referees shall be to hear and report all matters assigned by the district judge and to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders of judgment.

C. 1. Upon conclusion of the hearing, the referee shall provide a copy in writing of the recommended findings, conclusions, and orders to the parties, counsel, and the district judge *instante*.

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 District Judge may establish requirements that any or all recommended orders of the referee must be expressly approved by the reviewing judge before becoming effective.

D. 1. Any party, as well as the Department of Children and Family Services when the child is in the legal custody of the Department, 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 set a hearing date for the review. The objecting party shall promptly provide a copy of the objection and notice of the review to 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 recommendations of the referee.

2. The review of the district court shall be limited to a review of the record developed before the referee.

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-104. Mileage of Witnesses - Reimbursement for Expert Witnesses

In proceedings pursuant to this Code, the court may allow mileage, as in civil actions, to witnesses and reimbursement for expert witnesses. However, any mileage and reimbursement paid in accordance with this section shall not be tendered in advance of the hearing.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-105. Willful Violation of Court Order - 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 for not more than thirty (30) days, or both such fine and imprisonment.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-106. Report of Missing Child or Issuance of Fingerprint Card

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, the provisions of the Choctaw Nation Minor Identification Act¹ 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 Choctaw Nation Minor Identification Act² may be used by law enforcement officers.

¹⁻² Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-107. Transportation of Child Subject to Deprived Proceeding

A. The court may issue an order directing the Choctaw Nation Tribal Police to provide transportation to a child who is the subject of a deprived proceeding, regardless of where the child is placed within the tribe, 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 the 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 placement to court for hearing and returning the child back to the placement; and
4. Assisting the Department of Children and Family Services in transporting a child from any location to placement when requested by the Department for purposes of ensuring the safekeeping of the child as well as the Department employee.

B. 1. The Department shall provide reimbursement to the tribal police for necessary and actual expenses for transporting the child as follows:

- a. a fee for the cost of personal services at the rate of Twelve Dollars (\$12.00) per hour,
- b. mileage reimbursement for each mile actually traveled at the rate established in the tribal Travel Reimbursement Act,¹
- c. meals for transporting personnel, not to exceed Seven Dollars (\$7.00) per meal, and meals for the child being transported, not to exceed Seven Dollars (\$7.00) per meal.

2. The Department shall process and mail reimbursement claims within sixty (60) days of receipt.

C. The court issuing the transportation order shall make such provision for the transportation and safekeeping of a child as is appropriate in the circumstances.

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-108. Court Appointed Guardian Ad Litem of the Estate of a Child

A. 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 the child 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 the child is in the emergency or temporary custody of the Department of Children and Family Services, 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.

B. A copy of the order appointing a guardian ad litem shall be provided to the Department.

C. When the appointment of a guardian ad litem is necessary, the 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-109. Process for Conducting Background Checks, Fingerprinting and Personal Care Applications - Limits on Number of Children a Person May Care For

A. Unless prohibited by federal or tribal law, the Department shall develop, where feasible, an agency-wide process for conducting background checks, fingerprinting and personal care applications.

B. The Department shall maintain limits on the number of children a person is authorized to care for; however, a person shall be permitted to provide multiple services where authorized.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-110. Compliance with Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.

A. All Choctaw Nation of Oklahoma courts, agencies, officers, and employees shall comply with the provisions of Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.

B. Courts shall interpret any omissions or ambiguities of the Choctaw Nation Code in a manner consistent with Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.¹

C. Any Title IV-E plans for foster care, adoption assistance, and guardianship assistance by the Department, shall be for all populations served and in effect in all political subdivisions and Tribal service areas.

D. The Department will arrange for a periodic and independently conducted audit, no less frequently than once every three years, of the titles IV-E and IV-B programs.

E. The Department will have in effect procedures for verifying the citizenship or immigration status of any child in foster care under the responsibility of the Department under title IV-E or part B, and without regard to whether foster care maintenance payments are made under section 472 on behalf of the child.¹

¹ 42 U.S.C. §672

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-111. Timely Interstate Placement of Children

The Department shall promulgate procedures for the orderly and timely interstate placement of children which provides that:

1. Within 60 days after the Department receives from another state or tribe a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the state or tribe shall, directly or by contract:

a. conduct and complete the study, and

b. return to the other State or Tribe a report on the results of the study which shall address the extent to which placement in the home would meet the needs of the child;

2. The Department is not required to complete within the applicable time period the parts of the home study involving the education and training of the prospective foster or adoptive parents;

3. The Department shall treat any such report that is received from another state or tribe (or from a private agency under contract with another state/tribe) as meeting any requirements imposed by the state or tribe for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, Department determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

4. The Department shall not impose any restriction on the ability of an agency administering, or supervising the administration of, a state or tribal program operated under a plan approved under this part to contract with a private agency for the conduct of such a home study.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-8-112. Sex Trafficking Victims and Missing Children

A. The Department will promulgate, in consultation with law enforcement, juvenile justice, health care providers, education agencies, and organizations with experience in dealing with at-risk youth, policies and procedures (including relevant training for caseworkers) for identifying, documenting in agency records, and determining appropriate services for:

1. Any child or youth over whom the Department has responsibility for placement, care, or supervision and who the agency has reasonable cause to believe is, or is at risk or being, a sex trafficking victim (including children for whom an agency has an open case file but who have not been removed from the home, children who have run away from foster care, and who have not attained 18 years of age, and youth who are not in foster care but are receiving services); and

2. At the option of the Department, any individual who has not attained 26 years of age, without regard to whether the individual is, or was, in foster care under the responsibility of the agency.

History

CB-114-18, eff. Aug. 15, 2018.

CHAPTER IX. PROGRAMS, CONTRACTS, AND ADMINISTRATIVE PROVISIONS

Section 1-9-101. Abuse and neglect Reduction Services – Identification - Development

A. The Department of Children and Family Services, shall:

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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-102. Reserved.

Section 1-9-103. Reserved.

Section 1-9-104. Reserved.

Section 1-9-105.¹ Planning New Programs, Services and Major Modifications – Evaluation – Monitoring - Review

A. The Department of Children and Family 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 tribe 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 Chief, the Tribal Council, and the Court of Appeals, 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.

¹ Renumbered due to scrivener's error.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-106. Kinship Foster Care

A. There is hereby established a Kinship Foster Care Program in the Department of Children and Family Services.

B. The Department shall establish, in accordance with the provisions of this Section, standards for becoming a kinship foster care family.

C. 1. 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.

2. 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 the 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, placement shall be consistent with the provisions of Section 1-4-204 of this Title. The health, safety, or welfare of a child shall be of paramount concern in any placement.

D. 1. Upon the completion of the records search to ascertain if there is a 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 foster care maintenance payments until such foster parent receives final approval from the Department to be a kinship foster parent.

2. Following placement, the Choctaw Nation Tribal Police 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 applicable tribal and federal laws. The Director of the Department of Children and Family Services or his/her 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 the person from 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.

E. 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.

F. 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.

G. When the kinship foster parent is finally approved by the Department, in accordance with applicable tribal and federal law and rules promulgated by the Department of Children and Family Services regarding foster care services, the kinship foster care family shall be eligible to receive foster care maintenance payments 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.

H. 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.

I. The Department of Children and Family Services shall promulgate rules necessary to carry out the provisions of this section.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-107. Independent Living Act—Purpose—Eligibility

A. This section 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 Children and Family Services or with whom the Department has a contract, due to abuse or neglect, receive the protection and support necessary to allow those individuals to become self-reliant and productive citizens through the provision of 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.

C. An individual is eligible to receive independent living services from the age of sixteen (16) until the age of eighteen (18), during the time the individual is in the custody of the Department and in an out-of-home placement.

D. Independent living services may continue to the age of twenty-one (21), provided the individual is in the custody of the Department due to abuse or neglect and is in an out-of-home placement at the time of the individual's eighteenth birthday.

E. Individuals who are sixteen (16) years of age or older, who have been released from the custody of the Department due to the entry of an adoption decree or guardianship order are eligible to receive independent living services until the age of twenty-one (21).

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-9-108. Reserved.

Section 1-9-109. Reserved.

Section 1-9-110. Community Based Services and Care—Procedures for Letting of Grants or Contracts—Proposals

A. 1. The Department of Children and Family 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:

- a. home-based counseling, therapy, and crisis intervention services,
- b. nonresidential educational, vocational, social, and psychological diagnostic and counseling services,
- c. 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.

2. 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 non-secure facility consistent with the individualized treatment needs of the child and provided, whenever practicable, in or near a child's home community.

3. 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.

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 private providers in the Choctaw Nation are unable or unwilling to respond to the proposal, then providers outside the Choctaw Nation 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 tribal-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 tribal and federal law.

F. The Department is authorized to, and shall, enter into cooperative agreements with existing community-based programs, management information, and client tracking systems, and other shared resources as deemed necessary or appropriate by the Department.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-111. Reserved.

Section 1-9-112. Grievance Procedures

A. The Department of Children and Family Services shall make a complete written report of their investigations. The investigation report, together with its recommendations, shall be submitted to the prosecutor's office.

B. 1. Except as otherwise provided by the Choctaw Nation Children's Code, the reports required by Section 1-2-101 of this Title or any other information acquired pursuant to the Choctaw Nation Children's Code shall be confidential and may be disclosed only as provided in Section 1-2-108 of this Title and the Choctaw Nation Children's Code.

2. Except as otherwise provided by the Choctaw Nation Children's Code, any violation of the confidentiality requirements of the Choctaw Nation 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.

3. 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 Department of Children and Family Services shall provide for disclosure of relevant information concerning Department of Children and Family Services investigations to persons or entities acting in an official capacity with regard to the subject of the investigation.

4. Nothing in this section shall be construed as prohibiting the Department of Children and Family Services 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.

C. 1. The Department of Children and Family Services shall investigate any complaint alleging that an employee of the Department or 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 1-9-120 of this Title,
- b. provided information to any tribal 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-placing agency in conformity with the result of any such proceeding.

3. The Department of Children and Family Services 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-113. Shelter and Care for Minor Mother who is Victim of Domestic Abuse - Emergency Situations - Show Cause Hearing

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 services or the parent or guardian of the minor mother consents to services.

C. The show cause hearing provided for in Article IV of this Code¹ shall be provided for the minor mother, who is seeking relief from domestic abuse for herself or on behalf of any of her children.

¹ Section 1-4-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-114. Duty to Recruit Foster Parents from Relatives and Kin of Child - Ethnic and Racial Diversity among Adoptive and Foster Families

A. The Department of Children and Family Services and each child-placing agency shall make special efforts to recruit foster 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 and the child-placing agency.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-115. Promotion of Development of Foster Parent Associations

The Department of Children and Family Services shall cooperate with and shall help promote development of foster parent associations in the Choctaw Nation of Oklahoma. The tribal 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-116. Foster Care Education Program and Training

A. The Department of Children and Family Services 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 tribal 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 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 for kinship foster care prior to placement or at such other times as required by the Department; provided, however, in no event shall training take place later than one hundred twenty (120) days after placement of the child with the 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 foster care maintenance payments.

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.

C. Foster parent training programs may include, but not be limited to, in-service training, workshops, and seminars developed by the tribal 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.

D. The Department and each child-placing agency shall provide statewide training education, and continuing education programs for foster parents.

E. The Department or each child-placing agency shall notify a foster parent at least ten (10) business days in advance of the scheduling of education, continuing education, or foster parent training occurring near the vicinity of the home of a foster parent.

F. The Department may also provide additional foster care training to a foster parent. A foster parent may request in writing to the Department that additional foster parent training be provided.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-9-117. Report Concerning Employee of Department or Child-placing Agency

A. 1. A foster parent may report to the Department of Children and Family 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 1-9-120 of this title,
- b. provided information to any tribal 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-placing agency in conformity with the result of any such proceeding.

3. A reporter shall not be relieved of the duty to report incidents of alleged child abuse or neglect pursuant to the Choctaw Nation Children's Code.

B. 1. The Department of Children and Family Services 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 Department of Children and Family Services pursuant to such information shall not duplicate and shall be separate from the investigation mandated by the Choctaw Nation Children's Code or other investigation of the Department having notice and hearing requirements.

C. The Department of Children and Family Services 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-118. Written Agreement with Foster Care Placement Provider - Information Provided to Foster Parents - Supervision of Placed Children

A. The Department of Children and Family Services or any child-placing agency shall, prior to any foster placement, enter into a written contract with the foster care placement provider. The contract shall provide, at a minimum:

1. That the tribal 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 Choctaw Nation Children's Code;
5. Information regarding the amount of foster care maintenance payments, 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 tribal agency or the child-placing agency whenever, in the opinion of the tribal agency or the child-placing agency, the best interests of the deprived child require such release; and
7. Such other information required by the tribal agency and the child-placing agency.

B. The tribal 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 tribal agency central office, or the name and telephone number of the contact 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 tribal agency or the child-placing agency;
3. The name and telephone number of any foster parent association in the vicinity of the residence of the foster parent;

4. A copy of the statement of foster parent rights;

5. Information detailing the ability of the foster parent to submit information and written reports to the court, and to request the court for review of a decision by the tribal 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 1-4-805 of this Title; and

6. 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. 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 child no less than once every month with no less than two visits per quarter in the foster placement.

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 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.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-9-119. 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;

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 tribal 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 foster care maintenance payments 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 Choctaw Nation Children's Code;
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 Chapter VI of the Choctaw Nation Children's Code¹ for foster parents;
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 1-4-805 of this Title, and
 - (2) the reasons for the changes or termination in placement.
- b. The notice shall be waived only in emergency cases pursuant to Section 1-4-805 of this Title;

15. Be notified by the applicable tribal 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 tribal 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 home of the foster parent;

18. Be provided a fair, timely, and impartial investigation of complaints concerning the certification of the foster parent;

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 appeals process of the tribal agency and child placement agency and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal;

22. File a grievance and be informed of the process for filing a grievance.

B. The Department of Children and Family Services 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, or any child-placing agency.

¹ Section 1-6-101, et seq. of this Title.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-9-120. Grievance Procedures - Minimum Requirements – Maintenance of Records - Right to Present Grievances

A. The Department of Children and Family Services and child-placing agencies shall each establish grievance procedures for foster parents with whom such tribal agencies or child-placing agencies contract.

B. The procedures established 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. The Department and child-placing agency shall designate an employee to receive and process foster care grievances.

D. 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 record of grievances such person filed after the procedure has been completed.

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. The Department shall promptly initiate a plan of corrective discipline including, but not limited to, dismissal of any Department employee or cancellation or nonrenewal of the contract of a child-placing agency determined by the tribal 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 subsection 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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-9-121. Declarations and Findings of Tribal Council

A. The Tribal Council 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 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 a 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 Children and Family 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 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.

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.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-9-122. Supported Guardianship

The Department of Children and Family 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.

History

CB-114-18, eff. Aug. 15, 2018.

Chapter X. Uniform Parentage Act

Article 1. General Provisions

Section 1-10-101. Citation

This act¹ may be cited as the “Uniform Parentage Act.” While the Choctaw Nation of Oklahoma is not a member of the National Conference on Uniform State Laws, the Choctaw Nation supports the mission and objectives of the commission and adopts the Uniform Parentage Act.

¹ Section 1-10-101 et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-102. Definitions.

For purposes of the Uniform Parentage Act:

1. “Acknowledged father” means a man who has established a father-child relationship by signing an acknowledgment of paternity under Section 1-10-301 of this Act;
2. “Adjudicated father” means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child;
3. “Alleged father” means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father;
4. “Child” means an individual of any age whose parentage may be determined under the Uniform Parentage Act;
5. “Determination of parentage” means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under this section or adjudication by the court;
6. “Duress” means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity;
7. “Effective date” means when the acknowledgment of paternity is fully executed by the later of the signature dates;
8. “Ethnic or racial group” means, for purposes of genetic testing, a recognized group that

an individual identifies as all or part of the individual's ancestry or that is so identified by other information;

9. "Fraud" means an intentional misrepresentation of a material fact that could not have been discovered with reasonable diligence and was reasonably relied on by a person who signed an acknowledgment of paternity;

10. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

- a. deoxyribonucleic acid, and
- b. blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes;

11. "Man" means a male individual of any age;

12. "Material mistake of fact" means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity;

13. "Parent" means an individual who has established a parent-child relationship pursuant to Section 1-10-201 of this Act;

14. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship;

15. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

- a. the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child, and
- b. the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man;

16. "Presumed father" means a man who, by operation of law pursuant to Section 1-10-204 of this act, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

17. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability;

18. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

19. “Signatory” means an individual who authenticates a record and is bound by its terms;
and

20. “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States or any Indian Tribe.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-103. Scope of act - Choice of law - Jurisdiction of the District Court

- A. The Uniform Parentage Act applies to determination of parentage in this state.¹
- B. The court shall apply the law of this state² to adjudicate the parent-child relationship. The applicable law does not depend on:
 - 1. The place of birth of the child; or
 - 2. The past or present residence of the child.
- C. The Uniform Parentage Act does not create, enlarge, or diminish parental rights or duties under other laws of this state.
- D. The district court is authorized to adjudicate parentage under the Uniform Parentage Act.

^{1, 2} Probably should be “Nation;” however, Oklahoma has adopted the Uniform Parentage Act. See, 10 Okla. Stat §7700-101, et seq.

History

CB-114-18, eff. Aug. 15, 2018.

Article 2. Parent-Child Relationship

Section 1-10-201. Establishment of Parent-Child Relationship

- A. The mother-child relationship is established between a woman and a child by:
 - 1. The woman’s having given birth to the child;
 - 2. Adoption of the child by the woman; or
 - 3. As otherwise provided by law.
- B. The father-child relationship is established between a man and a child by:
 - 1. An un rebutted presumption of the man’s paternity of the child under Section 1-10-204 of this Act;
 - 2. An effective acknowledgment of paternity by the man under Section 1-10-

301 of this Act, unless the acknowledgment has been timely rescinded or successfully challenged;

3. An adjudication of the man's paternity;
4. Adoption of the child by the man; or
5. As otherwise provided by law.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-202. Equal Rights of Marital and Non-Marital Children

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-203. Application of Established Parent-Child Relationship

Unless parental rights are terminated, a parent-child relationship established under the Uniform Parentage Act¹ applies for all purposes, except as otherwise provided by the laws of this state.

¹ Section 1-10-202, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-204. Presumption of Paternity

A. A man is presumed to be the father of a child if:

1. He and the mother of the child are married to each other, and the child is born during the marriage;
2. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage, or after decree of separation;
3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

a. the assertion is in a record with the Oklahoma State Department of Health, Division of Vital Records, the Oklahoma Department of Children and Family Services, or the Choctaw Nation Department of Children and Family Services;

b. he agreed to be and is named as the child's father on the child's birth certificate, or

c. he promised in a record to support the child as his own; or

5. For the first two (2) years of the child's life, he resided in the same household with the child and openly held out the child as his own.

B. A presumption of paternity established under this section may be rebutted only by an adjudication under Section 1-10-601 of this Act.

History

CB-114-18, eff. Aug. 15, 2018.

Article 3. Acknowledgement of Paternity

Section 1-10-301. Voluntary Acknowledgment of Paternity

The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-302. Requirements of Acknowledgment - Void and Voidable Acknowledgment

A. An acknowledgment of paternity shall:

1. Be in a record and on the form prescribed by the Department of Children and Family Services, if filed with the Choctaw Nation of Oklahoma, pursuant to Section 1-10-312 of this Act;

2. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;

3. State that the child whose paternity is being acknowledged:

a. does not have a presumed father, or has a presumed father whose full name is stated; and

b. does not have another acknowledged or adjudicated father;

4. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

5. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two (2) years.

B. An acknowledgment of paternity shall be void if it:

1. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the Oklahoma State Department of Health, Division of Vital Records; or

2. States that another man is an acknowledged or adjudicated father.

C. An acknowledgment of paternity is voidable if it falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

D. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-303. Denial of paternity - Validity

A presumed father may sign a denial of his paternity. The denial is valid only if:

1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 1-10-312 of this Act;¹

2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury;

3. The presumed father has not previously:

a. acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 1-10-307 of this Act² or successfully challenged pursuant to Section 1-10-308 of this Act,³ or

b. been adjudicated to be the father of the child; and

4. The denial is signed not later than two (2) years after the birth of the child.

¹⁻³ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-304. Execution of Acknowledgment and Denial - Effective Date - Execution by Minors

A. An acknowledgment of paternity and a denial of paternity may be executed separately

or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are executed.

B. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

C. Subject to subsection A of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the execution of the document, whichever occurs later.

D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with the Uniform Parentage Act.¹

¹ Section 1-4-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-305. Effect of Acknowledgment or Denial

A. Except as otherwise provided in Sections 1-10-307 and 1-10-308 of this Act,¹ a valid acknowledgment of paternity signed by both parents is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

B. Except as otherwise provided in Sections 1-10-307 and 1-10-308 of this Act,² a valid denial of paternity by a presumed father when executed in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the non-paternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

¹⁻² Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-306. Reserved

Section 1-10-307. Rescission of Acknowledgment or Denial

A. A signatory may sign a rescission of acknowledgment of paternity or sign a rescission of denial of paternity before the earlier of:

1. Sixty (60) days after the effective date of the acknowledgment; or
2. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

B. A signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days of reaching the age of eighteen.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-308. Proceeding to Challenge Acknowledgment or Denial - Commencement - Burden of Proof

A. After the period for rescission under Section 1-10-307 of this Act¹ has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

1. On the basis of fraud, duress, or material mistake of fact; and
2. Within two (2) years after the acknowledgment or denial is executed.

B. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof, which shall be by clear and convincing evidence.

¹ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-309. Proceeding to Challenge Acknowledgment or Denial - Procedure

A. Every signatory to an acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to challenge the acknowledgment or denial.

B. For the purpose of challenging an acknowledgment of paternity or a denial of paternity, a signatory submits to personal jurisdiction of this state¹ by signing the acknowledgment or denial.

C. Except for good cause shown, during the pendency of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

D. A proceeding to challenge an acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Article 1-10-601 of this Act.²

E. At the conclusion of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the court shall order the Oklahoma State Department of Health, Division of Vital Records, to amend the birth record of the child, if appropriate, pursuant to Title 12, Section 728 (2011) of the Oklahoma Statutes or any subsequent amendment thereto.

¹ Probably should be "Nation."

² Section 1-10-101, et seq. of this Title.

³ 12 Okla. Stat. §728

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-310. Ratification of Unchallenged Acknowledgment Prohibited

A court conducting a judicial proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-311. Full Faith and Credit

A court of this state¹ shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

¹ Probably should read "Nation."

History

CB-114-18, eff. Aug. 15, 2018.

Article 4. Reserved

Article 5. Genetic Testing

Section 1-10-501. Scope of Article

A. This article governs genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or
2. Is tested pursuant to an order of the court or the Department of Children and Family Services.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-502. Order for Genetic Testing - Order for In Utero Testing not Allowed

A. In a civil action in which paternity is a relevant fact and at issue, except as otherwise provided in this Act,¹ the court shall order the child and other designated individuals to submit to genetic testing if the request is made by a party to the proceeding to determine parentage.

B. The Department of Children and Family Services may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.

C. If a request for genetic testing of a child is made before birth, the court or the Department of Children and Family Services may not order in utero testing.

D If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

¹Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-503. Requirements of Testing - Objection to Calculation - Retesting

A. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

1. The American Association of Blood Banks, or a successor to its functions;
2. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
3. An accrediting body designated by the federal Secretary of Health and Human Services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

C. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

1. The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;
2. The individual objecting to the testing laboratory's initial choice shall
 - a. if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled on a manner recognized by accrediting bodies, or
 - b. engage another testing laboratory to perform the calculations; and
3. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

D. If, after recalculation using a different ethnic or racial group, genetic testing does not conclusively identify a man as the father of a child under Section 1-10-505 of this Act,¹ an individual who has been tested may be required to submit to additional genetic testing.

¹ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-504. Report of Testing - Chain of Custody

A. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this Act will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

1. The names and photographs of the individuals whose specimens have been taken;
2. The names of the individuals who collected the specimens;
3. The places and dates the specimens were collected;
4. The names of the individuals who received the specimens in the testing laboratory; and
5. The dates the specimens were received.

¹ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-505. Identification of Father - Rebuttal

A. Under the Uniform Parentage Act,¹ a man is rebuttably identified as the father of a child if the genetic testing complies with this Act and the results disclose that the man has:

1. At least a ninety-nine-percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
2. A combined paternity index of at least 100 to 1.

B. A man identified under subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this Act² which:

1. Excludes the man as a genetic father of the child; or

2. Identifies another man as the possible father of the child.

C. Except as otherwise provided in Section 1-10-510 of this Act,³ if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

¹⁻³ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-506. Cost of Genetic Testing - Reimbursement of Costs Advanced by Department

A. Subject to assessment of costs under Article 6 of the Uniform Parentage Act,¹ the cost of initial genetic testing shall be advanced by the Department of Children and Family Services in a proceeding in which the Department is providing services.

B. In cases in which the Department of Children and Family Services is not providing services, the cost of initial genetic testing shall be advanced:

1. By the individual who made the request;
2. As agreed by the parties; or
3. As ordered by the court.

C. In cases in which the cost is advanced by the Department of Children and Family Services, the Department may seek reimbursement from a man who is identified as the father.

¹ Section 1-10-101, et seq. of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-507. Additional Testing of Man Previously Identified by Genetic Testing as Father

If the previous genetic testing identified a man as the father of the child under Section 1-10-505 the court or the Department of Children and Family Services may not order additional testing unless the party challenging the test provides advance payment for the testing.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-508. Others Who May Be When Testing Specimen is Unavailable from Man Who May be Father

A. Subject to subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for

genetic testing:

1. The parents of the man;
2. Brothers and sisters of the man;
3. Other children of the man and their mothers;
4. Other relatives of the man necessary to complete genetic testing; and
5. Any other custodians of genetic material.

B. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-509. Testing of a Deceased Individual

For good cause shown, the court may order genetic testing of a deceased individual.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-510. Identical Brothers - Testing - Non-Genetic Evidence to Determine Father

A. The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

B. If each brother satisfies the requirements as the identified father of the child under Section 1-10-505 of this Act, without consideration of another identical brother being identified as the father of the child, the court may rely on non-genetic evidence to adjudicate which brother is the father of the child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-511. Release of Report of Genetic Testing

Except as otherwise authorized by law, all files and records concerning genetic testing are confidential. Release of information from the files and records shall be consistent with federal law and shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent location, or other public assistance programs. Information may be released to public officials under rules adopted by the Department, consistent with tribal law or by federal rules or regulations.

History

CB-114-18, eff. Aug. 15, 2018.

Article 6. Proceeding to Adjudicate Parentage

Part 1. Nature of Proceeding

Section 1-10-601. Civil Proceeding to Adjudicate Parentage

A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the applicable rules prescribed by the Code of Civil Procedure of the Choctaw Nation of Oklahoma.¹

¹ Not yet codified.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-602. Who May Maintain Proceeding to Adjudicate Parentage

A. Subject to Article 3 of the Uniform Parentage Act and Sections 1-10-607 and 1-10-609 of this Act,¹ a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The Department of Children and Family Services; or

5. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

¹ Probably should read "Title."

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-603. Who May Be Joined

The following individuals may be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-604. Personal Jurisdiction

A. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

B. A court of this state¹ having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual who is Indian, or the guardian, or conservator of the

individual, if the following conditions are fulfilled:

C. In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state² may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with summons within this state;
2. The individual submits to the jurisdiction of this state³ by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in this state;⁴
4. The individual resided in this state⁵ and provided prenatal expenses or support for the child;
5. The child resides in this state⁶ as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state⁷ and the child may have been conceived by that act of intercourse;
7. The individual asserted parentage in the putative father registry maintained in this state⁸ by the appropriate agency; or
8. There is any other basis consistent with the constitutions of this state⁹ and the United States for the exercise of personal jurisdiction.

D. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

¹⁻⁹ Probably should read "Nation."

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-605. Venue

Venue for a proceeding to adjudicate parentage may be had in any county of the State of Oklahoma within the 10 ½ counties¹ of the Choctaw Nation of Oklahoma where:

1. The child resides or is found;
2. The respondent resides or is found if the child does not reside in this state; or
3. A proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

¹ Now known as the “Reservation of the Choctaw Nation of Oklahoma”

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-606. Commencement of Proceeding - Child Attaining Adulthood - Earlier Proceeding

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-607. Limitation of Actions

A. Except as otherwise provided in subsection B of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child.

B. A proceeding seeking to disprove the father-child relationship between a child and the child’s presumed father may be maintained at any time in accordance with Section 1-10-608 of this Title if the court, prior to an order disproving the father-child relationship, determines that:

1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
2. The presumed father never openly held out the child as his own.

C. A proceeding seeking to disprove the father-child relationship between a child and the child’s presumed or acknowledged father may be maintained at any time if the court determines that the biological father, presumed or acknowledged father, and the mother agree to adjudicate the biological father’s parentage in accordance with Sections 1-10-608 and 1-10-636 of this Title. If the presumed or acknowledged father or mother is unavailable, the court may proceed if it is determined that diligent efforts have been made to locate the unavailable party and it would not be prejudicial to the best interest of the child to proceed without that party. In a proceeding under this section, the court shall enter an order either confirming the existing father-child relationship or adjudicating the biological father as the parent of the child. A final order under this section shall not leave the child without an acknowledged or adjudicated father.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-608. Circumstances Requiring and Effect of Denial of Motion for Genetic

Testing - Factors - Incapacitated or Minor Child

A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court shall deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:

1. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

2. It would be contrary to the child's best interests to disprove the father-child relationship between the child and the presumed or acknowledged father.

B. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

1. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

2. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;

3. The facts surrounding the presumed or acknowledged father's discovery of his possible non-paternity;

4. The nature of the relationship between the child and the presumed or acknowledged father;

5. The age of the child;

6. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

7. The nature of the relationship between the child and any alleged father;

8. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

9. Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

C. In a proceeding involving the application of this section, a minor or incapacitated child shall be represented by a guardian ad litem.

D. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

Section 1-10-609. Time Limitation for Commencing Proceeding - Signatory to Acknowledgement of Paternity - Others

A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity may commence a proceeding seeking to challenge the paternity of the child only within the time allowed under Sections 1-10-307 or 1-10-308 of this Title.

B. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding not later than two (2) years after the effective date of the acknowledgment or adjudication.

C. A proceeding under this section is subject to the application of Section 1-10-308 of this Title.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-610. Joinder of Proceedings

A. Except as otherwise provided in subsection B of this section, a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody, or visitation, child support, dissolution of marriage, annulment, legal separation, probate or administration of an estate, or other appropriate proceeding.

B. A respondent may not join a proceeding described in subsection A of this section with a proceeding to adjudicate parentage brought under a provision of the Choctaw Nation Statutes for the enforcement of support orders or income-withholding orders issued by a tribunal of another state¹ and registered in the Choctaw Nation for enforcement.

¹ Probably should read "a state."

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-611. Commencement of Proceedings before Birth of Child - Actions that May be Taken before Child's Birth

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by Section 1-10-502 of this Title, collection of specimens for genetic testing.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-612. Child Not Necessary Party - Guardian Ad Litem

A. A minor child is a permissible party, but is not a necessary party to a proceeding under this Article.

B. The court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the court finds that the interests of the child are not adequately represented.

History

CB-114-18, eff. Aug. 15, 2018.

Part 2. Special Rules for Proceeding to Adjudicate Parentage

Section 1-10-621. Admissibility of Records - Genetic Testing Experts - Admissibility of Results of Genetic Testing and Copies of Bills

A. Except as otherwise provided in subsection C of this section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its mailing and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

1. Voluntarily or pursuant to an order of the court or the Department of Children and Family Services; or
2. Before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

C. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed pursuant to an order of the court under Sections 1-10-502 and 1-10-608 of this Title.

D. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten (10) days before the date of a hearing are admissible to establish:

1. The amount of the charges billed; and
2. That the charges were reasonable, necessary, and customary.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-622. Contempt of Testing Order - Refusal to Submit to Testing - Failure to Answer or Appear - Testing of Mother

A. An order for genetic testing is enforceable by contempt.

B. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.

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

D. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-623. Admission of Paternity

A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

B. If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-624. Temporary Order for Support - Custody and Visitation

A. In a proceeding under this Article, the court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

1. A presumed father of the child;
2. Petitioning to have his paternity adjudicated;
3. Identified as the father through genetic testing under Section 1-10-505 of this Title;
4. An alleged father who has declined to submit to genetic testing;
5. Shown by clear and convincing evidence to be the father of the child; or
6. The mother of the child.

B. A temporary order may include provisions for custody and visitation as provided by other law of this state.

History
CB-114-18, eff. Aug. 15, 2018.

Part 3. Hearings and Adjudications

Section 1-10-631. Rules to Adjudicate Paternity of a Child

The court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child;
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 1-10-505 of this Title shall be adjudicated the father of the child;
3. If the court finds that genetic testing under Section 1-10-505 of this Title neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity; and
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-10-632. Court Shall Adjudicate Paternity

- A. The court, without a jury, shall adjudicate paternity of a child.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-10-633. Close of Proceedings - Availability of Final Order and other Papers and Records

- A. On request of a party and for good cause shown, the court may close a proceeding under this Article.
- B. A final order in a proceeding under this Article is available for public inspection. Once a proceeding is closed under this Article, other papers and records are available only with the consent of the parties or on order of the court for good cause.

History
CB-114-18, eff. Aug. 15, 2018.

Section 1-10-634. Order Adjudicating Paternity - When Issued

The court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the court to be the father of a child.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-635. Dismissal for Want of Prosecution must be Without Prejudice

A. The court may issue an order dismissing a proceeding commenced under the Uniform Parentage Act for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-636. Orders - Assessment of Fees and Costs - Child's Surname - Amended Birth Certificate

A. The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage shall identify the child by name and date of birth.

C. Except as otherwise provided in subsection D of this section, the court may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this Article. The court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

D. The court may not assess fees, costs, or expenses against the Department of Children and Family Services or an agency of another state¹ designated to administer a statewide plan for child support in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq., except as provided by other law.

E. If both the mother and the father agree to change the surname of the child to that of the father, the court may order that the name be changed.

F. If the order of the court is at variance with the child's birth certificate, the court shall order the Oklahoma State Department of Health, Division of Vital Records to issue an amended birth registration pursuant to Title 12, Section 728 of the Oklahoma Statutes (2011)² or any subsequent statutory provision.

¹ Probably should read "a state."

² 12 Okla. Stat. §728

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-637. Upon Whom Determination of Parentage is Binding - Other Proceedings - Defensive Use - Appeals

A. Except as otherwise provided in subsection B of this Section, a determination of parentage is binding on:

1. All signatories to an acknowledgment or denial of paternity as provided in Article 3 of the Uniform Parentage Act¹; and

2. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Section 1-10-604(B) of this Title.

B. A child is not bound by a determination of parentage under the Uniform Parentage Act unless;

1. The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

2. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

3. The child was a party or was represented in the proceeding determining parentage by an attorney or guardian ad litem.

C. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of Section 1-10-604(B) of this Title and the final order:

1. Expressly identifies a child as a “child of the marriage,” “issue of the marriage,” or similar words indicating that the husband is the father of the child; or

2. Provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

D. Except as otherwise provided in subsection B of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

E. A party to an adjudication of paternity may challenge the adjudication only under law of this state² relating to appeal, vacation of judgments, or other judicial review.

¹ Section 1-10-101, et seq. of this Title.

² Probably should read “Nation.”

History

CB-114-18, eff. Aug. 15, 2018.

Article 7. Reserved

Article 8. Reserved

Article 9. Miscellaneous Provisions

Section 1-10-901. Application and Construction of Act - Uniformity of Law

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-902. Effect of Act on Proceedings Commenced or Executed Before Effective Date of Act

A proceeding to adjudicate parentage or an acknowledgment of paternity which was commenced or executed before the effective date is governed by the Uniform Parentage Act.¹

¹ Section 1-10-101, et seq. of this Title

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-10-903. Custody of Child Born Out of Wedlock

The mother of a child whose paternity has not been established is presumed to have custody of the child until such time as the paternity of the child has been established pursuant to Sections 1-10-101 through 1-10-902 of this Title. The parents of a child whose paternity is established are presumed to each have custody of the child until determined otherwise by a court. Until otherwise ordered by a court, written agreements, preferably agreements that are the result of mediation, are encouraged to document the scope of the legal and physical custody of the respective parents.

History

CB-114-18, eff. Aug. 15, 2018.

Chapter XI. Kinship Guardianship Assistance Program

Section 1-11-101. Eligibility

A. A child is eligible for a kinship guardianship assistance payment if the Department determines that:

1. the child has been:
 - a. removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
 - b. eligible for foster care maintenance payments while residing for at least six consecutive months in the home of the prospective relative guardian;

2 . being returned home or adopted are not appropriate permanency options for the child;

3. the child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and

4. with respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

B. Siblings.

1. The child and any sibling of the eligible child may be placed in the same kinship guardianship arrangement, if the Department and the relative agree on the appropriateness of the arrangement for the siblings; and

2. Kinship guardianship assistance payments may be paid on behalf of each sibling so placed.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-11-102. Payments

A. The Department shall provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who assume legal guardianship of the child for whom they have cared as foster parents and for whom they have committed to care on a permanent basis.

B. A kinship guardianship assistance payment on behalf of a child shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

C. Payments are terminated when the Department determines that:

1. the child has attained the age of 18;

2. the child has attained 21 years of age, and the child has a mental or physical disability which warrants the continuation of assistance to age 21;

3. the child has not attained 18 years of age, and the relative guardians are no longer legally responsible for the support of the child; or

4. the child is no longer receiving any support from the relative guardians.

D. The relative guardians are required to inform the Department of circumstances that would make them ineligible for guardianship assistance payments or eligible for

guardianship assistance payments in a different amount.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-11-103. Agreements

- A. The Department shall:
1. negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements; and
 2. provide the prospective relative guardian with a copy of the agreement.
- B. The agreement must specify, at a minimum:
1. the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
 2. the additional services and assistance that the child and relative guardian will be eligible for under the agreement;
 3. the procedure by which the relative guardian may apply for additional services as needed;
 4. that the Department will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000; and
 5. that the agreement shall remain in effect without regard to the Tribal service area residency of the relative guardian.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-11-104. Safety

The Department shall provide procedures for criminal records checks, including fingerprint-based checks of national crime information, on any relative guardian and any other adult living in the home of any relative guardian before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under this plan option.

History

CB-114-18, eff. Aug. 15, 2018.

Section 1-11-105. Case Plan Requirements

For a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardian assistance payments, the Department shall include in the case plan a description of:

1. the steps that the agency has taken to determine that it is not appropriate for

the child to be returned home or adopted;

2. the reasons for any separation of siblings during placement;
3. the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
4. the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
5. the efforts the Department has made to discuss adoption by the child's relative fosterparent as a more permanent alternative to legal guardianship and, in the case of a relative fosterparent who has chosen not to pursue adoption, documentation of the reasons; and
6. the efforts made by the Department to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

History

CB-114-18, eff. Aug. 15, 2018.