

Cherokee Nation Code Annotated

Title 10: Children

Chapter 51: Delinquent, Dependent and Neglected Children

Article I: Dependent and Delinquent Children

§ 1101. Definitions

Cite as: 10 CNCA § 1101

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

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

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

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

- a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
- b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return; or
- c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.

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

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

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

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

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

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

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

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

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

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

b. has habitually violated traffic laws or traffic ordinances.

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

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

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

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

d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or

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

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

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

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

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

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

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

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

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

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

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

a. have a program which includes community participation and community-based services; or

b. be a secure facility with a program exclusively designed for a particular category of resident.

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

19. **"Mental health examination"** and **"mental health evaluation"** means an examination or evaluation of a child by a qualified mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the qualified mental health professional:

a. the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or

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

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

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

b. a child guidance center operated by the State Department of Health; or

c. a facility or program operated by the Oklahoma Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the Department.

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

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

a. holds at least a master's degree in a mental health field; and

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

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

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

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

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

Historical Data

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