

Cherokee Nation Code Annotated

Title 10: Children

Chapter 51: Delinquent, Dependent and Neglected Children

Article I: Dependent and Delinquent Children

§ 1116. Disposition orders

Cite as: 10 CNCA § 1116

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

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

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

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

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the Court may consider the testimony of said parent,

guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and his ability to exercise parental control over the behavior of the juvenile.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. In any dispositional order removing a child from the home of the child, the

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

B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the Court at least once every six (6) months until such time as the child is returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the Court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be

continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.

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

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

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

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

G. The Court may require any child found to be a juvenile delinquent or child in need of supervision, the parents of any child found to be a juvenile delinquent, a child in need of supervision, a deprived child or a child in need of treatment, or both the child and the parents, to reimburse the Court fund, in whole or in part, for any disbursements made from the Court fund in conjunction with the case, including, but not limited to, Court-appointed attorney's fees, expert witness fees, law enforcement fees, witness fees, transcripts and postage. When any parent is financially able but has willfully failed to pay court costs or to reimburse the court fund as ordered by the court or has willfully failed to pay court costs and to reimburse the Court fund as ordered by the Court, the parent may be held in contempt of court and, upon conviction, shall be punished pursuant to 21 CNCA § 566. After a judicial determination that the child, the parent of the child, or both such child or parent, are able to pay the costs and to reimburse the court fund or pay the costs and to

reimburse the court fund in the case in installments, the Court may order the costs and such reimbursement of the court fund to be paid in installments and shall set the amount and due date of each installment. A parent may be found to be financially able to pay court costs or to reimburse the court fund or to pay court costs and to reimburse the Court fund in installments even though the Court has previously found the parent indigent.