

**TITLE 6. CHILDREN AND  
FAMILY RELATIONS  
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**CHAPTER 1. CHILDREN**

**Subchapter**

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**United States Code Annotated**

Indian Child Protection and Family Violence Prevention Act, see 25 U.S.C.A. § 3201 et seq.  
Indian Child Welfare Act, see 25 U.S.C.A. § 1901 et seq.

**SUBCHAPTER 1. PURPOSE; DEFINITIONS;  
GENERAL PROVISIONS**

**Section**

- 1-101. Purpose.
- 1-102. Definitions; general.
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**§ 1-101. Purpose**

The purpose of this chapter is to:

- A. Secure for each child subject to this chapter such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Nation and society in general;
- B. Preserve and strengthen the ties between the child and his Nation whenever possible;
- C. Preserve and strengthen family ties whenever possible, and strengthen and improve the home and its environment when necessary; and
- D. Remove a child from the custody of his parents and Indian custodians only when his welfare and safety or the protection of the public would otherwise be endangered; and
- E. Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Nation and society in general.

[NCA 01-126, § 102, approved Aug. 9, 2001.]

**Library References**

- Indians ⇄132.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 150, 152, 154 to 176.

**§ 1-102. Definitions; general**

Unless the context otherwise requires, as used in this chapter the following terms shall be defined as follows:

- A. Adjudicatory hearing.** “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition alleging a child to be deprived, in need of supervision, in need of treatment or delinquent filed pursuant to this title are supported by the evidence.
- B. Adult.** “Adult” means a person eighteen (18) years of age or over; except that any person alleged to have committed a delinquent act before he became eighteen (18) years of age shall be considered a child under this chapter for the purpose of adjudication and disposition of the delinquent act.
- C. Child.** “Child” means any unmarried person who is under age eighteen (18) and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe.
- D. Child custody proceedings.**
1. “Child custody proceedings” shall mean and include:
    - a. “Foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the

parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

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

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

d. "Adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

2. Such term or terms shall include custody proceedings involving delinquent or alleged delinquent children, but shall not include a placement based on an award in a divorce proceeding of custody to one of the parents.

**E. Commit.** "Commit" means to transfer legal custody.

**F. Custody.** "Custody" means legal and physical guardianship of the person.

**G. Deprivation of custody.** "Deprivation of custody" means the transfer of custody by the Court from a parent or a previous legal custodian to another person, agency, or institution.

**H. Detention.** "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending Court disposition or a Court order for placement or commitment.

**I. Dispositional hearing.** "Dispositional hearing" means a hearing, held after an adjudicating hearing has found a child to be deprived, neglected, in need of supervision, or delinquent in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

**J. Expert witness.** An "expert witness" means one of the following persons providing expert testimony on a topic related to his field of expertise:

1. A member of the child's Tribe who is knowledgeable about the child's Tribe's family values, practices and customs, provided that such qualifications shall be established by consideration of the following factors: the age of the expert witness, whether he is fluent in the language of the child's Tribe, whether he has resided within the territorial jurisdiction of the child's Tribe for a significant period of time, the extent of his involvement in Indian church activities, stomp ground ceremonies, band activities and other cultural activities within the Nation, testimony by other members of the child's Tribe that he is recognized as being knowledgeable about the child's Tribe's family values, practices and customs, and other similar factors;

2. A lay expert witness having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's Tribe;

3. A licensed physician;

4. A qualified mental health professional; or

5. A professional person having substantial education and experience in the area of his or her specialty.

**K. Guardianship of the person.** “Guardianship of the person” means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

1. The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment;

2. The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child;

3. The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents;

4. The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and

5. The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.

**L. Handicapped child.** “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.

**M. Indian country.** “Indian country” means any real property that is within the Nation’s political jurisdiction as defined in Article I, Section 2 of the 1979 Muscogee (Creek) Nation Constitution and that is: (1) owned by any Indian subject to restrictions against alienation; (2) held in trust by the United States for the benefit of any Indian; (3) held in trust by the United States for the benefit of the Muscogee (Creek) Nation; (4) any original unallotted fee land owned by the Muscogee (Creek) Nation prior to allotment, including without limitation the Mackey Sandbar site; or (5) any other real property which otherwise constitutes Indian country as that term is defined in 18 U.S.C. § 1151.

**N. Muscogee (Creek) child.** “Muscogee (Creek) child” means any person under the age of eighteen (18) years, who is either (1) a member of the Muscogee (Creek) Nation, or (2) who is eligible for membership in the Muscogee (Creek) Nation.

**O. Muscogee (Creek) household.** A “Muscogee (Creek) household” is a home in which at least one head of the household is a member of the Muscogee (Creek) Nation, or eligible for membership in the Tribe.

**P. Nation.** “Nation” means the Muscogee (Creek) Nation of Oklahoma.

**Q. Protective supervision.** “Protective supervision” means a legal status created by court order under which the child is permitted to remain in his own home under the supervision of the District Court through the child welfare worker during the period during which treatment is being provided to the family by the agency designated by the Court.

**R. Qualified mental health professional.** “Qualified mental health professional” means a person having specific training and current experience in the

mental health testing, examination, evaluation and diagnosis of children and adolescents and who either: holds at least a master’s degree in a mental health field and is employed under the classification of a Psychological Assistant or Social Worker II or above by the state as a provider of mental health services or possesses a current, valid Oklahoma license in a mental health field or permission to practice by a licensor board in a mental health field.

**S. Residual parental rights and responsibilities.** “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child’s religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

**T. Termination of parental rights or termination of parent-child legal relationship.** “Termination of parental rights” or “termination of the parent-child legal relationship” means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child’s right to inherit from the parent whose rights have been terminated.

**U. Transfer proceeding.** “Transfer proceeding” means any proceeding in the Court to grant, accept, or decline transfer of any children’s case from or to the courts of any Indian Nation or state whenever such transfer is authorized by Tribal, federal, or state law.

[NCA 01–126, § 103, approved Aug. 9, 2001.]

#### Cross References

Legal custody, guardianship, see Title 6, § 1–814.

### § 1–103. Definitions; family and custodial relationships

The following definitions shall be followed in all child custody proceedings in the Nation’s District Court, and are also hereby recognized as the official law of the Muscogee (Creek) Nation in all state child custody proceedings involving children of members of the Muscogee (Creek) Nation or children who are members of the Muscogee (Creek) Nation and who are subject to the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. and the Oklahoma Indian Child Welfare Act, 10 O.S. § 40 et seq. in such state court proceedings:

**A. Adoptive extended family member.** A person shall be recognized as an adoptive member of the child’s extended family if such person would come within the terms of the definitions of said extended family members set forth in this section by virtue of a lawful adoption accomplished in one of the following ways:

1. Pursuant to order of a state court or of a Tribal Court, including the Nation’s District Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or
2. Pursuant to custom of an Indian Nation, including customs regarding clan memberships, provided that the person claiming to be an adoptive mem-

ber of the child's extended family pursuant to Tribal custom shall have the burden of proof of establishing the fact of his adoptive relationship with he child's family, and such proof must include the testimony of at least one qualified expert witness knowledgeable about said customs.

**B. Aunt.** "Aunt" means a person who, by blood or marriage, is:

1. A female sibling of the biological parents; or
2. A female cousin of the biological parents; or
3. Any other person, who, by virtue of an adoption either of herself or a member of her family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as an aunt in accordance with paragraph 1 or 2 of this subsection.

**C. Brother.** "Brother" means a person who is:

1. Any male sibling; or
2. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as a brother in accordance with this subsection.

**D. Brother-in-law.** "Brother-in-law" means the husband of a sister by blood or marriage.

**E. Cousin.** "Cousin" means the child of an aunt or uncle; or the child of the child of an aunt or uncle.

**F. Extended family member.** "Extended family member" shall mean a person who has reached the age of eighteen (18) and who is the Indian child's:

1. Grandparent;
2. Aunt or uncle;
3. Brother or sister;
4. Fellow clan member;
5. Niece or nephew; or
6. First or second cousin.

**G. Grandparent.** "Grandparent" means a person who is:

1. A biological grandparent; or
  2. The brothers and sisters of a biological grandparent, and their spouses;
- or

3. A biological great-grandparent; or
4. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as an aunt in accordance with paragraphs 1 or 2 of this subsection.

**H. Indian custodian.** "Indian custodian" means any Indian person who has legal custody of an Indian child pursuant to the following type of authorization:

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## Title 6, § 1-103

1. Pursuant to order of a state court or of a Tribal Court, including the Nation's District Court, provided that said Court possessed jurisdiction over the child sufficient to issue such order; or

2. Pursuant to authorization by a parent who has transferred the temporary physical care, custody, and control over the child to such person, provided that said authorization need not be in writing, and may be established by testimony regarding verbal statements by the parent, habits and practices of the parent and the person claiming to be an Indian custodian regarding custody of the child, and proof of any other factors relevant to the person's status as an Indian custodian; or

3. Pursuant to customs of the Tribe of which the child is a member, based upon testimony of at least one qualified expert witness knowledgeable about said customs.

**I. Nephew.** "Nephew" means the male child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, or adoption or custom.

**J. Niece.** "Niece" means the female child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, adoption, or custom.

**K. Parent.** "Parent" means:

1. Any biological parent of an Indian child, not including an unwed father, unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action; or

2. Any person who has lawfully adopted an Indian child pursuant to order of a state court or of a Tribal Court, including the District Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or

3. Any person who has adopted a child pursuant to custom, common law or tradition of an Indian Nation.

**L. Sister.** "Sister" means:

1. Any female sibling, or

2. Any other person, who, by virtue of an adoption either of herself or a member of her family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as a sister in accordance with paragraphs 1 or 2 of this subsection.

**M. Sister-in-law.** "Sister-in-law" means the wife of a brother by blood or by marriage.

**N. Stepparent.** "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.

**O. Uncle.** "Uncle" means a person who, by blood or marriage, is:

1. A male sibling of the biological parents; or

2. A male cousin of the biological parents; or

3. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by

subsection A of this section and who qualifies as an uncle in accordance with paragraphs 1 or 2 of this subsection.

[NCA 01–126, § 104, approved Aug. 9, 2001.]

**Cross References**

Placement preferences, see Title 6, § 1–811.

**§ 1–104. Definitions; courts and agencies**

**A. Child placement agency.** “Child placement agency” means an agency designed for the care or placement of children licensed or approved pursuant to law of the Nation, or, if outside the Nation’s jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

**B. Child protection worker.** “Child protection worker” means the person who is responsible for the investigation of child abuse and neglect for Indian children subject to the District Court’s jurisdiction and referral of cases to the Prosecutor for filing, and for periodic reports and recommendations to the District Court regarding children placed in foster care by the District Court.

**C. Child treatment worker.** “Child welfare worker” means the person who is responsible for providing culturally oriented preventive and treatment services to at-risk Indian families, including education of the Indian community on child protection issues; and providing care and protection to Muscogee (Creek) children removed from their homes through advocacy of the Indian Child Welfare Act in state court, conduct of placement home studies and placement recommendations to the state court and the District Court, supervision of children placed by the District Court in the legal custody of the Muscogee (Creek) Nation Children and Family Services Administration, reports to the state court and the District Court, and maintenance of a Tribal foster care program.

**D. Children and Family Services Administration (CFSA).** “Children and Family Services Administration” or “CFSA” means the Children and Family Services Administration of the Muscogee (Creek) Nation.

**E. District Court.** “District Court” means the Muscogee (Creek) Nation District Court.

**F. Law enforcement agency.** “Law enforcement agency” means a law enforcement agency of the Nation, the Bureau of Indian Affairs, a municipality, a county sheriff or a state agency.

**G. Lighthouse Police.** “Lighthouse Police” means the law enforcement agency of the Muscogee (Creek) Nation.

**H. Receiving agency.** “Receiving agency” means the department or law enforcement agency first receiving a report of alleged child abuse.

[NCA 01–126, § 104–A, approved Aug. 9, 2001; amended by NCA 06–059, § 1, approved May 8, 2006.]

**§ 1–105. Definitions; types of children’s needs requiring court intervention**

**A. Abused child.** “Abused child” means a child who is the subject of an act or omission by a parent, guardian or custodian in one of the following

categories which seriously threatens the health or welfare of the child, provided that persons investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates:

1. Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any kind, subdural hematoma, soft tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition arising from accidental or natural causes, or circumstances indicate that such condition or death may not be the product of an accidental or natural causes; or
2. Any case in which a child is subject to serious emotional damage, based on findings by a qualified expert witness who is a psychiatrist or psychologist; or
3. Any case in which a child is subject to sexual assault or molestation; or
4. Any case in which the child's parents, legal guardians or custodians have allowed another to abuse the child without taking lawful means to stop such abuse and prevent it from recurring.

**B. Child in need of supervision.** "Child in need of supervision" means any child:

1. Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
2. Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
3. Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school for ten (10) or more days or parts of days within a semester or for 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.

**C. Child in need of treatment.**

1. "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.

2. 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 of a child in need of treatment pursuant to the definitions contained herein.

**D. Delinquent child.** “Delinquent child” means a child who:

1. Has violated any lawful order of the Court made pursuant to this chapter or has violated any federal law, law of the Nation, or state law, except traffic laws and hunting and fishing laws; or
2. Has habitually violated any traffic, hunting, or fishing laws.

**E. Deprived child, dependent child, neglected child.** “Deprived child,” “dependent child” or “neglected child” means a child who is the subject of an act or omission by a parent, guardian or custodian in one of the following categories which threatens the health or welfare of the child, provided that persons investigating reports of child neglect shall take into account accepted child rearing practices of the culture in which the child participates:

1. A child who is for any reason destitute or homeless; or
2. A child who does not have the proper parental care or guardianship through the actions or omissions of a parent, guardian or custodian; or
3. A child 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, including but not limited to an abused child; or
4. A child whose parent, guardian, or custodian has allowed another to mistreat or abuse the child without taking lawful means to stop such maltreatment or abuse and prevent it from recurring; or
5. A child whose parent, guardian, or legal custodian has abandoned the child without intent to return, or who had placed him informally and without benefit of Tribal custom with any other person, and/or has not contributed to the support of the child or maintained personal contact with the child for a period in excess of twelve (12) months.
6. A child 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 non-handicapped 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
7. A child who is, due to improper parental care and guardianship, absent from school for ten (10) or more days or parts of days within a semester or for 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.

[NCA 01–126, § 105, approved Aug. 9, 2001.]

**§ 1–106. Definitions; placement facilities**

**A. Child care center.** “Child care center” means an institution or facility designed for the care of children licensed or approved pursuant to law of the

Nation, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

**B. Emergency shelter home.** "Emergency shelter home" means a foster home licensed by the Muscogee (Creek) Nation Children and Family Services Administration (CFSA) and designated primarily for time-limited emergency placements, usually lasting no longer than thirty (30) days for any child.

**C. Family foster home or foster home.** "Family foster home" or "foster home" means a home where care is provided to a total of not more than ten (10) children at any given time, including children who are not foster children, in a family type setting, licensed or approved pursuant to law of the Nation, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

**D. Group care facilities.** "Group care facilities" means places other than family care homes or child care centers providing care for small groups of children.

**E. Halfway house.** "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent or in need of supervision under this chapter.

**F. Shelter.** "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

**G. Special services home.** A "special services home" means a foster home licensed by the CFSA and able to provide extraordinary care or services, by virtue of training, experience, and/or special skills.

[NCA 01-126, § 106, approved Aug. 9, 2001.]

### § 1-107. Role of the Prosecutor in juvenile proceedings

The Prosecutor shall act on behalf of the people of the Muscogee (Creek) Nation for the protection of the child in all state and Tribal Court child custody proceedings subject to the Juvenile Code. The CFSA is primarily responsible for the protection of children in state and Tribal custody; however, the Prosecutor shall be responsible for the legal proceedings in deprived actions for Tribal courts and state courts, in accordance with § 1-205 of this Title. CFSA may request legal advice or representation in other matters. The Prosecutor shall assist the CFSA pursuant to the requirements of the Juvenile Code, but shall exercise independent professional judgments related to the protection of the child. If a conflict of interest should arise between CFSA staff and the child or between elected officials and the child, the Prosecutor's foremost obligations shall be to uphold the law for the protection of the child.

[NCA 01-126, § 110, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

#### Library References

Indians ⇄640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **Title 6, § 1–108**

## **CHILDREN**

### **§ 1–108. District Court**

The District Court shall be the Muscogee (Creek) Nation District Court or its Juvenile Division. The Chief Judge shall appoint the Judge or Judges who may act as the District Court, including Special Judges.

[NCA 01–126, § 111, approved Aug. 9, 2001.]

#### **Cross References**

District Court, generally, see Title 26, § 2–101 et seq.

#### **Library References**

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–109. Place of sitting**

The District Court shall sit in the same place the District Court sits, provided, that the Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.

[NCA 01–126, § 112, approved Aug. 9, 2001.]

#### **Cross References**

Terms and location of court, rules and procedures, see Title 27, App. 1, Rule 3.

#### **Library References**

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **SUBCHAPTER 2. CHILDREN AND FAMILY SERVICES ADMINISTRATION**

### **Section**

- 1–201. Muscogee (Creek) Nation Children and Family Services Administration.
- 1–202. Contracts and cooperative agreements.
- 1–203. General authority and duties.
- 1–204. Proceedings in District Court.
- 1–205. State court proceedings.
- 1–206. Multi-Disciplinary Team.
- 1–207. Manager.

### **§ 1–201. Muscogee (Creek) Nation Children and Family Services Administration**

The Muscogee (Creek) Nation Children and Family Services Administration (CFSA) is an agency of the Muscogee (Creek) Nation of Oklahoma subject to the fiscal and administrative supervision of the Executive Office of the Muscogee (Creek) Nation.

[NCA 01–126, § 107, approved Aug. 9, 2001.]

**Cross References**

Executive Office, see Title 16, § 1–101 et seq.

**Library References**

Indians ☞132.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152, 154 to 176.

**§ 1–202. Contracts and cooperative agreements**

The Principal Chief is authorized to approve and execute all federal contracts related to funding of the CFSA, and to execute cooperative agreements with the State of Oklahoma, provided that said cooperative agreements are first approved by the National Council.

[NCA 01–126, § 107, approved Aug. 9, 2001.]

**Cross References**

Applications for financial assistance, see Title 37, § 2–501 et seq.

**Library References**

Indians ☞132, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 150, 152, 154 to 176.

**§ 1–203. General authority and duties**

The CFSA shall be responsible for the following:

- A. Providing culturally oriented preventive and treatment services to at-risk Indian families within the jurisdiction of the Nation, including parenting skills training and education of the Indian community on child protection issues;
- B. Conducting home studies and preparing reports for purposes of foster care licensing and recommendations relating to potential adoptive parents;
- C. Issuing foster care licenses and supervision of foster care families;
- D. Negotiating cooperative agreements between the Nation and other states or tribes relating to provision of services to Indian children and their families, provided that said agreements shall not be effective unless approved by the National Council and executed by the Principal Chief;
- E. Cooperating with other social services agencies in order to ensure the best possible protection of Indian children and their families; and
- F. Exercising all other duties consistent with this title.

[NCA 01–126, § 108, approved Aug. 9, 2001.]

**Cross References**

Adoptions, generally, see Title 6, § 1–1001 et seq.  
Foster care, see Title 6, § 1–1101 et seq.

**Library References**

Indians ☞132.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152, 154 to 176.

**§ 1-204. Proceedings in District Court**

The CFSA shall be responsible for the protection of Indian children subject to the jurisdiction of the District Court. In performing these duties, the CFSA shall have authority to engage in the following activities:

A. Investigation of all reports or complaints regarding Indian children located within the territorial boundaries of the Muscogee (Creek) Nation and domiciled on Indian country or otherwise subject to the jurisdiction of the Muscogee (Creek) Nation;

B. Request of legal documents for child custody proceedings where necessary for the protection of Indian children;

C. Submission of these legal requests to the Prosecutor of the Muscogee (Creek) Nation for action;

D. Placement and supervision of children placed by the District Court in the legal custody of the Muscogee (Creek) Nation Children and Family Services Administration, including emergency placements;

E. Conduct placement home studies and placement recommendations regarding children in foster care to the District Court;

F. Reports and recommendations regarding children in foster care to the District Court; and

G. Participation in and attendance at all District Court proceedings in order to serve as an advocate for the child, including permanency planning for the child.

[NCA 01-126, § 108, approved Aug. 9, 2001.]

**Library References**

Indians ⇄132.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152, 154 to 176.

**§ 1-205. State court proceedings**

The Prosecutor shall provide the following services in state court proceedings:

A. Intervention on behalf of the Muscogee (Creek) Nation in all Oklahoma state court child custody proceedings involving Muscogee (Creek) children domiciled in Indian country within the jurisdiction of the Nation, in order to secure dismissal of said state court action for lack of state court jurisdiction; and referral of said case to the Child Protection Worker for institution of child custody proceedings in the District Court if necessary for the protection of the child.

B. Intervention on behalf of the Muscogee (Creek) Nation in all Oklahoma state court child custody proceedings within the boundaries of the Muscogee (Creek) Nation involving enrolled Muscogee (Creek) children or Muscogee (Creek) Nation children whose biological parent or parents are enrolled members, in order to serve as an advocate of the Muscogee (Creek) Nation regarding proper placement of the child; and to move on behalf of the Nation to transfer proceedings to the Nation's District Court if appropriate. CFSA shall conduct

and prepare home studies; provide supervision; provide rehabilitative services to the child and his family; prior to each hearing, prepare reports and recommendations to the appropriate Court; and attend all Court hearings in said matter;

C. Intervention on behalf of the Muscogee (Creek) Nation in child custody proceedings involving enrolled Muscogee (Creek) children or Muscogee (Creek) Nation children whose biological parent or parents are enrolled members arising in an Oklahoma state court outside the boundaries of the Muscogee (Creek) Nation, or a Tribal court located within Oklahoma, for the limited purpose of monitoring activities in said proceedings or for the purpose set forth in paragraph B of this subsection; and,

D. Intervention on behalf of the Muscogee (Creek) Nation in child custody proceedings involving Muscogee (Creek) children arising in state or Tribal courts outside of the state of Oklahoma, for the limited purpose of monitoring activities in said proceedings or for the purposes set forth in paragraph B of this subsection.

[NCA 01–126, § 108, approved Aug. 9, 2001; amended by NCA 06–059, § 1, approved May 8, 2006; NCA 07–252, § 2, eff. Oct. 10, 2007; NCA 07–252, § 3, eff. Oct. 10, 2007.]

#### Library References

Indians ☞136.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 154 to 176.

### § 1–206. Multi-Disciplinary Team

The CFSA shall maintain an effective Multi-Disciplinary Team (hereinafter “MDT”), which shall have responsibility for making recommendations regarding the diagnostic, prognostic, and treatment services being offered to the child or family in connection with reported abuse, pursuant to the following requirements:

A. The MDT shall staff each case on an anonymous basis. In all its discussions, the team shall not disclose the names or addresses or any other identifying information relating to the children, families, or informants in those cases.

B. At the beginning of the discussion of each case, a designated team member shall state the following information: The severity of the abuse or neglect and the age and sex of the child. The team shall also state whether the child was hospitalized and whether the child’s medical records were checked.

C. The public shall not be permitted to attend those portion of MDT meetings concerned with mandatory team discussions of public and private agencies responses to each report of child abuse and neglect being considered by the team, as well as the team’s recommendations related to public agency responses.

D. At the meeting, the MDT shall review the responses of public and private agencies to each report of child abuse or neglect and shall state whether such response was timely and adequate.

[NCA 01–126, § 108, approved Aug. 9, 2001.]

**Cross References**

Records and reports of incidents of domestic abuse, see Title 6, § 3–314.

**Library References**

Indians ☞132.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152, 154 to 176.

**§ 1–207. Manager**

The Manager of the CFSA shall be responsible for the day to day operation of CFSA, shall hire staff pursuant to the personnel policies and procedures of the Nation, shall supervise all staff of CFSA, shall maintain oversight over case-loads, shall be responsible for seeking funding sources and preparing grant applications, and shall prepare and submit quarterly reports to the Principal Chief for distribution to the National Council.

[NCA 01–126, § 109, approved Aug. 9, 2001.]

**Library References**

Indians ☞132.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152, 154 to 176.

**SUBCHAPTER 3. JURISDICTION AND VENUE**

**Section**

- 1–301. Jurisdiction over Indian children domiciled in Indian country.
- 1–302. Jurisdiction over Indian children domiciled outside of Indian country.
- 1–303. Indian Child Welfare Act transfers from state courts.
- 1–304. Indian Child Welfare transfers from Tribal courts to the Muscogee (Creek) Nation District Court.
- 1–305. Muscogee (Creek) Nation District Court transfers to other Tribal or state courts.

**Cross References**

Jurisdiction of Muscogee (Creek) Nation Courts, see Title 27, § 1–102.

**§ 1–301. Jurisdiction over Indian children domiciled in Indian country**

Except as otherwise provided by law, the District Court shall have exclusive jurisdiction in child custody proceedings involving a Muscogee (Creek) child domiciled in Indian country within the Muscogee (Creek) Nation and concurrent jurisdiction with the child’s Tribe in all cases involving an Indian child of another Tribe domiciled in Indian country within the boundaries of the Muscogee (Creek) Nation, including the following types of proceedings: cases in which the child has been made a ward of the District Court; foster care placements; termination of parental rights; preadoptive placements; adoptive placements; guardianships; transfer proceedings to or from a court of another sovereign; child support; paternity actions; actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law; actions for writ of habeas corpus; and actions for the treatment or commitment of a mentally ill or developmentally disabled child. The District

Court shall possess exclusive jurisdiction over all delinquency proceedings involving Indian children and involving acts occurring in Indian country, provided that such jurisdiction may be concurrent with the state in the case of delinquency cases involving delinquent acts occurring both in Indian country and outside Indian country.

[NCA 01–126, § 113, approved Aug. 9, 2001.]

#### Cross References

Adoptions of children, jurisdiction, see Title 6, § 1–1001.

#### Library References

Indians ⇨134 to 136, 134(3), 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–302. Jurisdiction over Indian children domiciled outside of Indian country

**A. Concurrent jurisdiction.** The District Court shall have concurrent jurisdiction with the state in child custody proceedings involving a Muscogee (Creek) child who is not domiciled in Muscogee (Creek) Nation Indian country, including foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, guardianships, child support, paternity actions, actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law, and for the treatment or commitment of a mentally ill or developmentally disabled child.

**B. Manner in which concurrent jurisdiction may be exercised.** Concurrent jurisdiction shall be exercised by the District Court in the following circumstances, provided that the child shall be made a ward of the court in such cases:

1. When a child custody proceeding has been filed in District Court, and no other child custody proceedings has been held in the court of another jurisdiction; or
2. When a child custody proceeding has been filed in the court of another sovereign and such proceeding involves a Muscogee (Creek) child and the case has been transferred to the District Court pursuant to Title 6, §§ 1–303 and 1–304.

[NCA 01–126, § 114, approved Aug. 9, 2001.]

#### Cross References

Adoptions of children, jurisdiction, see Title 6, § 1–1001.

#### Library References

Indians ⇨501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 1–303. Indian Child Welfare Act transfers from state courts

**A. Conditions.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b), any state court may transfer to the District Court herein any foster

care or parental rights termination proceeding subject to exclusive or concurrent Tribal jurisdiction involving any Indian child who is a member of or eligible for membership in the Nation, if the District Court accepts jurisdiction over the case.

**B. Hearing on acceptance of transfer.** The District Court shall determine, in a transfer hearing initiated by the Nation or the child's parent or Indian custodian, whether the transfer to its jurisdiction is required (1) because the District Court has exclusive jurisdiction over the case or (2) because the case is subject to concurrent Tribal jurisdiction and would not be detrimental to the best interest of the child. Such determination shall be made after the order of transfer is received by the Court Clerk. In cases involving concurrent jurisdiction the Court may consider the following:

1. Whether the child or its family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide; and
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 completed; and
3. Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family.

**C. Transfer procedures.** A state court transferring a case to the Nation's jurisdiction under subsection A of this section shall transmit all documents and legal and social records, or certified copies thereof, to the District Court, which court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a District Court juvenile division case number as in other cases. [NCA 01-126, § 115, approved Aug. 9, 2001.]

#### Library References

Indians ☞134(3), 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

#### Code of Federal Regulations

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

### § 1-304. Indian Child Welfare transfers from Tribal courts to the Muscogee (Creek) Nation District Court

Any Tribal court or other CFR court may transfer to the District Court herein any case involving a Muscogee (Creek) child, if the District Court finds that the transfer would not be detrimental to the best interests of the child, pursuant to the same requirements as Title 6, § 1-303.

[NCA 01-126, § 116, approved Aug. 9, 2001.]

#### Library References

Indians ☞134(3).  
Westlaw Topic No. 209.

## Code of Federal Regulations

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

**§ 1-305. Muscogee (Creek) Nation District Court transfers to other Tribal or state courts**

**A. Conditions.** The District Court, absent objection by either parent, is authorized to transfer any children's case arising within the court's jurisdiction, said child not being a member or eligible for membership in the Nation, to the Court of the child's Indian Nation, or if the child is a non-Indian, to the courts of the state where the child is a resident or domiciled, upon the petition of the Prosecutor, either parent, a custodian or guardian, the Indian Nation of which the child is a member or eligible for membership, or an appropriate official of the child's state.

**B. Considerations.** In making such transfers the District Court may consider:

1. The best interests of the child;
2. Any special needs or mental or physical disease or defects of the child and family and the ability of the Nation and 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 its family; and
5. The likelihood that the same child and family would return to the Nation's jurisdiction within a reasonable time and come before the District Court again.

**C. Order of transfer.** 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 District 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.

[NCA 01-126, § 117, approved Aug. 9, 2001.]

**Library References**

Indians ☞ 132, 401, 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**Code of Federal Regulations**

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

**SUBCHAPTER 4. PROCEDURE, GENERALLY**

**Section**

- 1–401. Procedural requirements.
- 1–402. Hearings.
- 1–403. Jury trials.
- 1–404. Effect of proceedings.
- 1–405. Inspection of court records.
- 1–406. Expungement of delinquency or in need of supervision court records.
- 1–407. Exclusion of certain statements by alleged delinquent.
- 1–408. Appeals.

**Cross References**

Judicial procedures, generally, see Title 27, § 1–101 et seq.

**§ 1–401. Procedural requirements**

A. The rules of juvenile procedure herein set forth shall apply in all proceedings under this chapter. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

B. In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

C. The District Court shall have the authority by written court rule not inconsistent with this chapter or other law of the Muscogee (Creek) Nation setting forth rules of civil procedure and filed of record in the Court Clerk's office and National Council Secretary's office to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this chapter.

[NCA 01–126, § 118, approved Aug. 9, 2001.]

**Cross References**

Criminal offenses, see Title 14, § 2–101 et seq.  
Criminal procedure, see Title 14, § 1–101 et seq.  
Rules and procedures of tribal courts, see Title 27, App. 1.  
Tribal court proceedings, see Title 27, § 2–101 et seq.

**Library References**

Indians ⇄ 132, 501, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–402. Hearings**

A. **Procedure.** Hearings shall be held before the Court without a jury, except as provided in Title 6, § 1–403, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public, including elected officials, shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public to attend. The Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the parents or Indian

custodian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by court.

**B. Record.** An audio tape record shall be taken of all proceedings which might result in the deprivation of custody. An audio tape record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge.

**C. Consolidated hearings.** When more than one (1) child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

**D. Separate hearings.** Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.

**E. Confidentiality.** The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this chapter shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the Court's detention facilities for not more than thirty (30) days, or by both such fine and imprisonment.

[NCA 01-126, § 119, approved Aug. 9, 2001.]

#### Cross References

Trials, see Title 27, § 2-109 et seq.

#### Library References

Indians ⇄ 132, 519, 651.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-403. Jury trials

**A. Demand for jury.** The child, his parent or guardian, or any interested party may demand a trial by jury of not more than six (6) persons:

1. In adjudicatory hearings concerning an alleged delinquent, deprived child, or child in need of supervision;
2. In hearings seeking termination of parental rights;
3. In determining the parentage of a child under this chapter.

**B. Failure to demand.** Unless a jury is demanded, it shall be deemed to be waived.

[NCA 01-126, § 120, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

**Cross References**

Jury trial, generally, see Title 27, § 2–110 et seq.  
 Rules and procedures, jury trial, see Title 27, App. 1, Rule 11 et seq.

**Library References**

Indians ⇨651.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**§ 1–404. Effect of proceedings**

**A. No civil disability.** No adjudication or disposition in proceedings under this chapter shall impose any civil disability upon a child or disqualify him from any personnel system of the Nation, military service application, appointment or from holding an office of the Nation.

**B. Admissibility of evidence in other proceedings.** No adjudication, disposition, or evidence given in proceedings brought under this chapter shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this chapter concerning the same child.

[NCA 01–126, § 121, approved Aug. 9, 2001.]

**Library References**

Indians ⇨132, 520(3), 526.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 150 to 179.

**§ 1–405. Inspection of court records**

**A. Right to inspect.** Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.

**B. No right to inspect.** Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

[NCA 01–126, § 122, approved Aug. 9, 2001.]

**Cross References**

Review, lending or copying of court files, see Title 27, App. 1, Rule 15B.

**§ 1–406. Expungement of delinquency or in need of supervision court records**

**A. Petition.** Any person who has been adjudicated delinquent or in need of supervision, who was taken into custody on an allegation of delinquency or need of supervision, or who was the subject of a petition for delinquency or need of supervision later may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its

own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two (2) years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two (2) years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

**B. Hearing; notice.** Upon the filing of a petition for expungement or entering of a court order, the Court shall set a date for a hearing and shall notify the Prosecutor and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including the child's past or present foster parents and all agencies or officials known to have relevant files relating to the individual.

**C. Order.** The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

1. The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this chapter since the termination of the Court's jurisdiction;
2. No proceeding concerning a felony, a misdemeanor involving moral turpitude, or a petition under this chapter is pending or being instituted against him; and
3. The rehabilitation of the person has been attained to the satisfaction of the Court.

**D. Expungement.** Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter. Copies of the order shall be sent to each agency or official named therein.

**E. Inspection of expunged records.** Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

**F. Expungement upon dismissal of petition at adjudication.** In any proceeding alleging delinquency or need-of-supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

[NCA 01-126, § 123, approved Aug. 9, 2001.]

### **§ 1-407. Exclusion of certain statements by alleged delinquent**

**A. Inadmissibility of statements and admissions.** No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be

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admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

**B. Exceptions to exclusion.** Notwithstanding the provisions of subsection A of this section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

[NCA 01–126, § 124, approved Aug. 9, 2001.]

### Cross References

Criminal procedure, rights of defendant, see Title 14, § 1–303.

### Library References

Indians ⇄520(3), 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## § 1–408. Appeals

An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the Appellate Court and shall be decided at the earliest practical time. The Nation shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

[NCA 01–126, § 125, approved Aug. 9, 2001.]

### Cross References

Appellate procedure, see Title 27, § 3–101 et seq.  
Rules of Appellate Procedure, see Title 27, App. 2.

### Library References

Indians ⇄132, 542, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

## SUBCHAPTER 5. ABUSE AND NEGLECT REPORTING REQUIREMENTS; CENTRAL REGISTRY

### Section

1–501. Legislative purpose.

## GENERAL PROVISIONS

## Title 6, § 1-502

### Section

- 1-502. Persons required to report child abuse or neglect.
- 1-503. Required report of postmortem investigation.
- 1-504. Evidence of abuse and neglect.
- 1-505. Immunity from liability.
- 1-506. Communication not privileged.
- 1-507. Reporting procedures.
- 1-508. Confidentiality of reports of abuse or neglect.
- 1-509. Home study and other reports.
- 1-510. Children and Family Services Administration records.
- 1-511. Law enforcement records confidential.
- 1-512. Identity confidential.
- 1-513. Central registry.
- 1-514. Action upon receipt of report.

### Cross References

Domestic and family violence, see Title 6, § 3-101 et seq.  
Physical abuse of a child, see Title 14, § 2-313.  
Sexual abuse of a person under the age of sixteen, see Title 14, § 2-315.

### United States Code Annotated

Reporting of child abuse, see 18 U.S.C.A. § 1169.

### § 1-501. Legislative purpose

The National Council hereby declares that the complete reporting of child abuse and neglect is a matter of concern and that in enacting this subchapter it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse and neglect. It is the further intent of the Nation that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative interaction.

[NCA 01-126, § 201, approved Aug. 9, 2001.]

### Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

### § 1-502. Persons required to report child abuse or neglect

A. Any person specified in subsection B of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the CFSA or appropriate law enforcement agency.

B. Persons required to report such abuse or neglect or circumstances or conditions shall include any of the following:

1. Physician or surgeon, including a physician in training;
2. Child health associate or community health representative (CHR);

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3. Medical examiner or coroner;
4. Dentist;
5. Osteopath;
6. Optometrist;
7. Chiropractor;
8. Chiropodist or podiatrist;
9. Registered nurse or licensed practical nurse;
10. Hospital personnel engaged in the admission, care, or treatment of patients;
11. School official or employee;
12. Social worker or worker in a family care home or child care center;
13. Mental health professional;
14. Any law enforcement personnel;
15. The Prosecutor or his assistants.

C. In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or CFSA.

D. Any Indian or non-Indian person subject to the jurisdiction of the District Court who willfully violates the provisions of this section:

1. Shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00); and
2. Shall be liable for damages proximately caused thereby.

[NCA 01-126, § 202, approved Aug. 9, 2001.]

**Library References**

Indians ☞132.

Infants ☞13.5.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.

C.J.S. Infants §§ 116 to 117.

**§ 1-503. Required report of postmortem investigation**

A. Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the appropriate law enforcement agency, the Child Protection Worker, the Prosecutor, and the CFSA.

B. The CFSA shall forward a copy of such report to the central registry.

[NCA 01-126, § 203, approved Aug. 9, 2001.]

**Library References**

Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

**§ 1–504. Evidence of abuse and neglect**

A. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

B. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

[NCA 01–126, § 204, approved Aug. 9, 2001.]

**Library References**

Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

**§ 1–505. Immunity from liability**

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this chapter, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this subchapter or otherwise performing his duties or acting pursuant to this chapter shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

[NCA 01–126, § 205, approved Aug. 9, 2001.]

**Library References**

Health ⇨768.	C.J.S. Hospitals § 44.
Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5(2).	C.J.S. Infants § 117.
Westlaw Topic Nos. 198H, 209, 211.	C.J.S. Mental Health §§ 123 to 124.

**§ 1–506. Communication not privileged**

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this subchapter.

[NCA 01–126, § 206, approved Aug. 9, 2001.]

**Cross References**

Spouse's testimony, rights of defendant, see Title 14, § 1–303.

**Library References**

Indians ☞132, 520, 640.  
 Infants ☞13.5(1).  
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150 to 179.  
 C.J.S. Infants § 116.

**§ 1–507. Reporting procedures**

A. Reports of known or suspected child abuse or neglect made pursuant to this subchapter shall be made immediately to the CFSA or Lighthouse Police and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by CFSA.

B. Such reports, when possible, shall include the following information:

1. The name, address, age, sex, and race of the child;
2. The name and address of the parent, guardian or Indian custodian;
3. The nature and extent of the child’s injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child’s siblings;
4. The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
5. The family composition;
6. The source of the report and the name, address, and occupation of the person making the report;
7. Any action taken by the reporting source;
8. Any other information that the person making the report believes may be helpful in furthering the purposes of this section.

C. A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Prosecutor’s office and to the Lighthouse Police.

D. A written report from persons or officials required by this subchapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

[NCA 01–126, § 207, approved Aug. 9, 2001.]

**Library References**

Indians ☞132.  
 Infants ☞13.5(1).  
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.  
 C.J.S. Infants § 116.

**§ 1–508. Confidentiality of reports of abuse or neglect**

A. Except as provided in this section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

B. Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when

authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

C. Any person who violates any provision of this section shall be subject to a civil penalty of not more than five hundred dollars (\$500.00).

D. Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

1.<sup>1</sup> The law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect, caring for, supervising or treating a child or family which is the subject of the report or record, including the Lighthorse Police, Attorney General, and the Muscogee (Creek) Nation Children and Family Services Administration, including the Deputy Director of Community Services, but excluding other administrators, personnel and elected officials of the Muscogee (Creek) Nation of Oklahoma.

E. After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection D of this section and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the manager of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the manager of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is the Prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

[NCA 01-126, § 208, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

<sup>1</sup> So in original.

#### Library References

Indians ☞132.  
 Infants ☞13.5(1).  
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.  
 C.J.S. Infants § 116.

### § 1-509. Home study and other reports

**A. Home study reports.** Unless waived by the Court, the CFSA or other agency designated by the Court shall make a home study and report in writing in all children's cases, except:

1. If the allegations of a petition filed under Title 6, § 1-707 are denied, the study shall not be made until the Court has entered an order of adjudication; and

2. The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

**B. Use of reports as evidence.** For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires. The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified herein.

[NCA 01–126, § 209, approved Aug. 9, 2001.]

#### Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

### § 1–510. Children and Family Services Administration records

All records of the Nation's Children and Family Services Administration related to child custody proceedings concerning all children's cases under the provisions of this chapter, and all records of any federal agency related to child custody proceedings concerning all children's cases under the provisions of this chapter may not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- A. To the victim in each case when the child is found guilty of a delinquent act;
- B. When the child has escaped from an institution to which he has been committed;
- C. By order of the Court;
- D. When the Court orders the child to be held for criminal proceedings;
- E. When there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
- F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by law of the Nation.

[NCA 01–126, § 210, approved Aug. 9, 2001.]

#### Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

**§ 1-511. Law enforcement records confidential**

The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this chapter shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- A. To the victim in each case when the child is found guilty of a delinquent act;
- B. When the child has escaped from an institution to which he has been committed;
- C. By order of the Court;
- D. When the Court orders the child to be held for criminal proceedings;
- E. When there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
- F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by law of the Nation.

[NCA 01-126, § 211, approved Aug. 9, 2001.]

**Library References**

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

**§ 1-512. Identity confidential**

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this subchapter may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

[NCA 01-126, § 212, approved Aug. 9, 2001.]

**§ 1-513. Central registry**

A. When the National Council determines that sufficient funding and resources are available, the Nation shall establish a central registry of child protection for the purpose of maintaining a registry of information concerning each case of child abuse reported under this subchapter.

- B. The central registry shall contain but shall not be limited to:
  1. All information in any written report received under this subchapter;
  2. Record of the final disposition of the report, including services offered and services accepted;

3. The plan for rehabilitative treatment;
4. The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
5. Any other information which might be helpful in furthering the purposes of this chapter.

C. The CFSA Manager may employ a manager of the central registry on a part-time or full-time basis if funds are available, or may assign the duties of the manager of central registry to a CFSA employee or employees on a part-time basis. The person performing the duties of the manager shall have charge of said registry. Subject to available appropriations, the manager shall equip his office so that data in the central registry may be made available during nonbusiness hours through the use of computer technology. Such computerized records shall be password coded and only CFSA personnel, judges, justices and law enforcement personnel shall have access to the password.

D. After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection B of Title 6, § 1-502 and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the manager of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the manager of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is the Prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

E. Unless an investigation of a report conducted pursuant to this subchapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the manager of the central registry based upon the investigation made by the CFSA or the enforcement agency.

F. In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the child's eighteenth (18th) birthday. Once sealed, the record shall not otherwise be available unless the Manager of the central registry, pursuant to rules promulgated by CFSA and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the manager may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

G. At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the manager of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

H. At any time subsequent to the completion of the investigation, a subject of the report may request the manager to amend, seal, or expunge the record of the report. If the manager refuses to does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the District Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this subchapter. The CFSA shall be given notice of the hearing. The burden in such a hearing shall be on the CFSA. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

I. Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this chapter shall be given to the subject of such report and to the CFSA. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

J. Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this subchapter shall be subject to a civil penalty not in excess of five hundred dollars (\$500.00) and any actual damages sustained.

K. The CFSA shall adopt such rules and regulations for the central registry as may be necessary to encourage cooperation with other Nations, states and the National Center on Child Abuse and Neglect.

[NCA 01-126, § 213, approved Aug. 9, 2001.]

#### Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

### § 1-514. Action upon receipt of report

A. The Muscogee (Creek) Nation Children and Family Services Administration (CFSA) shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect pursuant to cooperative agreement between the two agencies. The immediate concern of such investigation shall be the protection of the child.

B. The investigation, to the extent that it is reasonably possible, shall include:

1. The nature, extent, and cause of the abuse or neglect;
2. The identity of the person responsible for such abuse or neglect;
3. The names and conditions of any other children living in the same place;
4. The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
5. All other data deemed pertinent.

C. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or

neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the District Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

D. The receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The receiving agency may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The receiving agency shall provide for persons to be continuously available to respond to such reports. Nations and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the receiving agency or to have such arrangements made through agreements with local law enforcement agencies.

E. The receiving agency shall refer its investigation report to the Child Protection Worker. Upon receipt of a report, if the CFSA reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the appropriate law enforcement agency is necessary for the protection of the child or other children under the same care, the law enforcement agency and the Prosecutor shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with applicable provisions of this chapter.

F. If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the receiving agency in order to refer the case for investigation. If the local law enforcement agency is unable to contact the receiving agency, it shall make a complete investigation and may request the Prosecutor to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the CFSA.

[NCA 01-126, § 301, approved Aug. 9, 2001.]

## **SUBCHAPTER 6. SEARCH WARRANTS; CUSTODY OR DETENTION**

### **Section**

- 1-601. Search warrants for the protection of children.
- 1-602. Issuance and return of search warrant.
- 1-603. Expiration of search warrant.

## GENERAL PROVISIONS

## Title 6, § 1-602

### Section

- 1-604. Children taken into custody prior to filing of petition.
- 1-605. Detention or release of child; medical examination and treatment; notice and hearing.
- 1-606. Notification of court officers.
- 1-607. Temporary care and shelter.
- 1-608. Conditions of detention of child; detention or confinement in adult facility.
- 1-609. Court-ordered release.
- 1-610. Authorized medical treatment.
- 1-611. Court ordered commitment for observation.

### Cross References

Criminal procedure, search and seizure, see Title 14, § 1-306.

### § 1-601. Search warrants for the protection of children

**A. Authority to issue.** A search warrant may be issued by the District Court to search any place for the recovery of any Indian child believed to be a delinquent child, a child in need of supervision, a child in need of treatment or a neglected or abused child and located within Indian country subject to the Court's jurisdiction.

**B. Warrant requirements.** Such warrant shall be issued only on the conditions that the application for the warrant shall:

1. Be in writing and supported by affidavit sworn to or affirmed before the Court;
2. Name or describe with particularity the child sought;
3. State that the child is believed to be a delinquent child, a child in need of supervision, a child in need of treatment or a neglected or abused child and the reasons upon which such belief is based;
4. State the address or legal description of the place to be searched; and
5. State the reasons why it is necessary to proceed pursuant to this section instead of proceeding by issuance of a summons.

[NCA 01-126, § 302, approved Aug. 9, 2001.]

### Library References

Indians ◊640.

Searches and Seizures ◊102 to 108.

Westlaw Topic Nos. 209, 349.

C.J.S. Indians §§ 151 to 179.

C.J.S. Searches and Seizures §§ 175 to 186,  
188 to 193, 199 to 200, 203 to 205.

### § 1-602. Issuance and return of search warrant

**A. Issuance.** If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

**B. Service.** The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct. A copy of the warrant, the

application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

**C. Custody of child.** If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility.

**D. Return.** The warrant shall be returned to the issuing court, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Prosecutor. If the child was not found, such information should be subscribed on the warrant.

[NCA 01–126, § 303, approved Aug. 9, 2001.]

#### Library References

Indians ☞640.

Searches and Seizures ☞123, 124, 150.

Westlaw Topic Nos. 209, 349.

C.J.S. Indians §§ 151 to 179.

C.J.S. Searches and Seizures §§ 173 to 174,  
204 to 205, 225 to 243, 274 to 275.

### § 1–603. Expiration of search warrant

A search warrant for the protection of a child shall be null and void if not served within ten (10) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

[NCA 01–126, § 304, approved Aug. 9, 2001.]

### § 1–604. Children taken into custody prior to filing of petition

**A. Custody without court order.** A child may be taken into custody prior to the filing of a petition by a peace officer without a court order if the child is found violating any law, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

**B. Custody with court order.** A child may be taken into custody prior to the filing of a petition pursuant to an order of the District Court issued on 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 there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The Court order may be written or oral, provided, that if the order is issued orally, the Judge shall reduce the order to writing within twenty-four (24) hours of the oral issuance of the order. The Court order may be transmitted to the Court Clerk by facsimile, and the facsimile copy filed stamped upon receipt, provided that the original order shall be delivered to the Court Clerk and attached to the file stamped facsimile copy within ten (10) days of the date of filing the facsimile copy.

[NCA 01–126, § 305, approved Aug. 9, 2001.]

## Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-605. Detention or release of child; medical examination and treatment; notice and hearing**

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

**B. Custody of alleged deprived child.** Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court or he shall be taken immediately before a judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or Child Protection Worker shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to the Chief Judge, or if the Chief Judge cannot be reached, then to any Judge regularly serving the Court. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent guardian, legal custodian or another responsible person pending further proceedings pursuant to this subchapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The Court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to this chapter is warranted.

**C. Custody of alleged child in need of treatment.** Whenever a child is taken into custody as a child in need of treatment, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court or he shall be taken immediately before a judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a child in need of treatment without a court order, the peace officer or Child Protection Worker shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to the Chief Judge, or if the Chief Judge cannot be reached, then to any Judge regularly serving the Court. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of any hearing pursuant to this subsection. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The Court may release an alleged child in need of treatment from protective custody upon such conditions as the Court finds reasonably necessary for the protection of the child or others and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to this chapter is warranted. Any protective order of the Court pursuant to this subsection for a mental health examination of the child shall be provided. After a prescreening examination and a determination by a qualified medical health professional that there is reasonable cause to believe that as a result of a demonstrable mental illness there exists an imminent danger that the child will intentionally or unintentionally seriously physically injure himself or another person, the child may be admitted to a hospital or mental health facility on an emergency psychiatric basis. Except upon an order of the court for an inpatient mental health examination of the child, such emergency psychiatric admission shall be for not more than two (2) judicial days, excluding weekends and legal holidays.

[NCA 01-126, § 306, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

#### § 1-606. Notification of court officers

Whenever an officer takes a child to a detention or shelter facility, or admits a child to a medical facility, and determines not to release said child, the officer who took the child to a detention or shelter facility shall notify the Prosecutor, the CFSA, and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Prosecutor, the CFSA, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child

was not released. This report shall be filed within twenty-four (24) hours excluding Saturdays, Sundays, and legal holidays.

[NCA 01-126, § 307, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-607. Temporary care and shelter

**A. Temporary shelter.** A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the CFSA and designated by the Court or the CFSA and shall not be placed in detention.

**B. Temporary shelter in child's home.** Upon application of the CFSA the Court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the CFSA, if emergency caretaker services are available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the CFSA, to resume charge of the child, but in no event shall such period of time exceed twenty-four (24) hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the CFSA, to resume charge of the child. The Manager of the CFSA shall designate in writing the representatives of CFSA authorized to perform such duties. The Court order allowing emergency shelter in the child's home may be written or oral, provided, that if consent is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

[NCA 01-126, § 308, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-608. Conditions of detention of child; detention or confinement in adult facility

**A. Basic requirements.** When a child is taken into custody pursuant to the provisions of this chapter, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public, pursuant to the following guidelines:

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

2. Whenever the Court orders a child to be held in a juvenile detention facility, as that term is defined in this chapter, an order for secure detention

shall remain in force and effect for not more than ten (10) days after such order. Upon an application of the Prosecutor and after a hearing on such application, the Court, for good and sufficient cause may allow an additional period not to exceed ten (10) days after such hearing. The total period of pre-adjudicatory or predisposition shall not exceed the ninety (90) day limitation specified in paragraph 1 of this subsection. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the Court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention, or may order the release of the child from detention.

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

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

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

1. The child is an escapee from a correctional facility or community correctional program or placement; or

2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; or

3. The child is seriously assaultive or destructive towards others or himself; or

4. The child is detained for the commission of a crime that would constitute a serious act; or

5. The child is detained for the commission of a crime that would constitute a habitual criminal act; or

6. The child is currently charged with a felony or misdemeanor and is on probation or parole on a prior delinquent offense, is on pre-adjudicatory community supervision, is currently on release status on a prior delinquent offense, or has willfully failed or there is reason to believe that the child will willfully fail to appear for District Court proceedings.

**C. Prohibition regarding use of adult secure detention facilities; exceptions.** Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup or other adult detention facility unless: the child is detained for the commission of a crime that would constitute felony if committed by an adult; and the child is awaiting an initial court appearance which is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays; and there is no existing acceptable alternative placement for the child; and the jail, adult lockup or adult detention facility meets the requirements for licensure of state juvenile detention facilities, is appropriately licensed, and provides sight and sound separation for juveniles, including total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities, total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities and separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both.

**D. Limited use of adult secure facilities.** Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile training school or group home from being held in any jail certified by the Oklahoma Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention. The time limitations for holding a child in jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

**E. Use of jail for runaways.** Notwithstanding the provisions of this section a child who is alleged to be a runaway from another Indian Nation's jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, or legal custodian.

**F. Detention hearing for child in delinquency proceedings involving alleged felony crime.** No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime if committed by an adult shall be released from such facility if in writing a law enforcement agency has requested that a detention hearing be

held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the Prosecutor, alleging new circumstances concerning the further detention of the child. When, following a detention hearing the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition. Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

**G. Contracts for juvenile detention facilities.** The CFSA shall initiate negotiations for a contract on behalf of the Muscogee (Creek) Nation with any state juvenile detention facility for the providing of detention services pursuant to 10A O.S. 2–3–101 G, provided that such contract is subject to approval by the Principal Chief and National Council.

[NCA 01–126, § 309, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–609. Court-ordered release

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

[NCA 01–126, § 310, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–610. Authorized medical treatment

**A. Emergency medical treatment without court order.** When any child is taken into custody pursuant to this chapter and it reasonably appears to the police officers, child protection worker or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any police officer, any child protection worker or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent,

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

**B. Court order for medical treatment prior to adjudication.** At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

1. When the Court finds that emergency medical, surgical, or dental treatment is required for a child in CFSA custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this chapter or pursuant to court order.

2. After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non emergency medical, surgical, or dental treatment or care for a child in CFSA custody.

**C. Court order for medical treatment after adjudication.** After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

[NCA 01-126, § 311, approved Aug. 9, 2001.]

#### Library References

Health ☞911.	C.J.S. Physicians, Surgeons, and Other Health
Indians ☞640.	Care Providers § 116.
Westlaw Topic Nos. 198H, 209.	C.J.S. Right to Die §§ 4, 23 to 26, 51, 53.
C.J.S. Indians §§ 151 to 179.	

### § 1-611. Court ordered commitment for observation

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two (72) hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten (10) days.

[NCA 01-126, § 312, approved Aug. 9, 2001.]

#### Library References

Indians ☞640.	C.J.S. Indians §§ 151 to 179.
Infants ☞227(1).	C.J.S. Infants §§ 24 to 25, 41, 43, 46 to 48, 71
Westlaw Topic Nos. 209, 211.	to 95.

**SUBCHAPTER 7. ADJUDICATION**

**Section**

- 1-701. Court intake.
- 1-702. Prosecutor intake.
- 1-703. Deferred adjudication.
- 1-704. Deferred adjudication admissible.
- 1-705. Court diversion by stipulation.
- 1-706. Limitation on diversions.
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- 1-715. Appointment of guardian ad litem.
- 1-716. Notice of legal rights.
- 1-717. Adjudicatory hearing.
- 1-718. Mentally ill and developmentally disabled children.
- 1-719. Dismissal of petition.
- 1-720. Sustaining petition.
- 1-721. Temporary orders.

**§ 1-701. Court intake**

A. Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of supervision, need of treatment, neglect or abuse, the law enforcement officer or other person may refer the matter to the CFSA, which shall determine whether the interests of the child or of the community requires that further action be taken.

B. If the CFSA worker determines that the interests of the child or of the community require that court action be taken, he shall request in writing the Prosecutor to file a petition and deliver a copy of the entire case file to the Prosecutor. The file shall include without limitation, the initial referral, the investigative report, and all available police reports, medical reports and other relevant documents.

C. If the CFSA worker is unable to determine whether the interests of the child or of the Nation require that court action be taken from information available to him, he may investigate or refer the matter to another agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this chapter.

D. If the CFSA worker determines that the interests of the child or of the Nation do not require court action, the CFSA may assist the family in development of a voluntary treatment plan and/or offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

[NCA 01-126, § 401, approved Aug. 9, 2001.]

## Library References

Indians ↻134, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-702. Prosecutor intake**

A. Upon receiving a request to file a petition and the accompanying reports and files from the CFSA, the Prosecutor shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the applicable evidentiary rules to establish the jurisdiction of the District Court over the child.

B. If the Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the District Court over the child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the appropriate law enforcement or child welfare agency to conduct a further investigation into the matter.

C. If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the District Court over the child, he shall file a petition concerning the child.

[NCA 01-126, § 402, approved Aug. 9, 2001.]

**§ 1-703. Deferred adjudication**

A. Prior to the filing of a petition, either the CFSA or the Prosecutor with the consent of the CFSA may divert any children's case from the court process through use of a deferred adjudication, except a case subject to prosecution as a major crime or subject to Title 6, § 1-706.

B. A deferred adjudication shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the CFSA or Prosecutor on behalf of the Nation agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract.

C. Each such contract shall contain the following:

1. The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.
2. The specific treatment programs the parents, guardian, or custodian agree to successfully complete and their duration.
3. The specific facts which the parents, guardian, or custodian agree to do or to refrain from doing.
4. The specific treatment or other social services to be offered by the Nation or the Bureau of Indian Affairs and accepted by the family.
5. A fixed, limited time for the contract to run not exceeding one (1) year.

6. That the Prosecutor will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term of the contract.

7. That each party has received a copy of the contract.

D. No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge of the District Court.

[NCA 01-126, § 403, approved Aug. 9, 2001.]

**§ 1-704. Deferred adjudication admissible**

The deferred adjudication contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm.

[NCA 01-126, § 404, approved Aug. 9, 2001.]

**§ 1-705. Court diversion by stipulation**

A. After filing of a petition but prior to the entry of an order sustaining the petition, the Prosecutor with the consent of the CFSA, may divert any children's case, except a case subject to prosecution as a major crime or subject to Title 6, § 1-706, from the adjudicatory process with the consent of the respondents and the Court by obtaining consent decree if:

1. The Court has informed the child and his parents, guardian, or legal custodian, and the Court believes they understands said information regarding their rights to:

a. Deny the allegations of the petition and require the Prosecutor to prove each allegation by admissible evidence;

b. Confront and cross-examine the witnesses against them and to call witnesses on their own behalf;

c. Refuse to testify against themselves or each other in delinquency cases;

d. A trial by a jury of six (6) persons at the adjudicatory stage, where a jury trial is available;

e. Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel.

2. Written consent to the stipulation is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding.

3. The CFSA has prepared a treatment plan for the family to be incorporated into the consent decree which distinctly states:

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## Title 6, § 1-707

a. A statement that CFSA has consulted with the child's parents in development of the plan or a brief summary of CFSA's attempt to obtain such consultation and explanation why such attempt failed.

b. The specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration.

c. The specific treatment or other social services to be offered by the CFSA and accepted by the family.

d. The specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing.

e. The person or agency to be vested with custody of the child if the child cannot remain in its own home, the specific provisions of subparagraphs (b), (c), and (d) of this paragraph which must be completed or accomplished for a specific duration before the child is returned to its own home, and the period of supervision of the child in its own home.

B. After all parties have consented, the Court shall review the treatment plan and if the Court agrees that the plan is satisfactory, shall order all parties by the consent decree to abide by the provisions of the treatment plan. The consent decree shall be monitored and modified as in other dispositions, provided, that if the family fails to comply with the treatment plan, the Court, on motion of the Prosecutor shall proceed with the adjudication.

C. A consent decree shall remain in effect for not exceeding one (1) year, provided, that upon notice of hearing the Court may extend the force of the decree for an additional term of one (1) year with the consent of the parties. The adjudication shall be continued during the term of the consent decree and thereafter dismissed if the decree is complied with.

[NCA 01-126, § 405, approved Aug. 9, 2001.]

### § 1-706. Limitation on diversions

No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve (12) months or has been handled by informal adjustment for a delinquent act in the preceding twelve (12) months.

[NCA 01-126, § 406, approved Aug. 9, 2001.]

### § 1-707. Filing petition; time limits when child already in custody; order to remove child from home

A. **Petition when child already in custody.** When a child has been taken into custody under any provision of this chapter before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to his parent, guardian or other legal custodian. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, guardian or other person having custodial care of the child, the five-day limitation herein shall not cause the child to be relinquished to such parent, guardian or other legal custodian. In all such cases, the Court shall determine whether the petition was filed within a reasonable time, except that a petition

shall be filed within thirty (30) days of the child being taken into custody. When a child has been taken into custody as provided by this chapter and the Court has ordered an inpatient mental health examination of the child pursuant to this chapter, the Court shall determine whether the petition was filed within a reasonable time.

**B. Petition prior to removal of child.** The Prosecutor shall file a petition seeking adjudication for any alleged delinquent child, child in need of supervision, deprived child or child in need of treatment. The petition may seek removal of the child from the home. No order of the Court providing for the removal of an alleged or adjudicated deprived child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and as appropriate, reasonable efforts have been made to provide for the return of the child to his home or a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

[NCA 01-126, § 407, approved Aug. 9, 2001.]

**Cross References**

Home study, timing when allegations of petition are denied, see Title 6, § 1-509.  
Initiation of civil proceedings, see Title 27, § 2-101.

**Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-708. Petition heading**

The Prosecutor shall sign and file all child welfare petitions alleging a child to be delinquent, in-need-of-supervision, neglected, or abused. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION  
OKMULGEE DISTRICT

<b>In The Interest Of:</b>	)	
	)	
	)	<b>Case No. JV-</b>
	)	
<b>An Alleged</b>	)	<b>Child,</b>

[NCA 01-126, § 408, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.



**YOU ARE FURTHER ORDERED**, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you. You may seek the advice of an attorney on any matter relating to this action at your own expense.

---

Court Clerk

[Seal]

(Return as in other civil cases)

[NCA 01–126, § 410, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–711. When summons unnecessary**

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

[NCA 01–126, § 411, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–712. Additional parties to be summoned**

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

[NCA 01–126, § 412, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–713. Service of summons**

A. Summons shall be served personally, pursuant to applicable rules of civil procedure.

B. If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the jurisdiction of the District Court, the fact of the child’s presence within the Court’s jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

1. When the residence of the person to be served outside the Court's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

2. When the person to be served has no residence within the Court's jurisdiction and his place of residence is not known or when he cannot be found within the Court's jurisdiction after due diligence, service may be by publication.

[NCA 01-126, § 413, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-714. Failure to appear**

A. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

B. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

C. When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both.

[NCA 01-126, § 414, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-715. Appointment of guardian ad litem**

A. The Court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to this chapter when:

1. No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or
2. The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
3. The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

B. The Court may appoint a guardian ad litem for any parent in proceedings pursuant to this chapter who has been determined to be mentally ill by a

Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

C. At the time any child first appears in Court, if it is determined that he has no guardian of his person, the Court shall appoint a guardian of the person of the child before proceeding with the matter.

D. In all proceedings brought for the protection of a child suffering from abuse or nonaccidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

E. All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

[NCA 01-126, § 415, approved Aug. 9, 2001.]

#### **Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

#### **§ 1-716. Notice of legal rights**

A. Advice regarding legal rights. At his first appearance before the Court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

1. Their right to a jury trial upon demand where available;
2. Their right to be represented by an attorney, at their own expense, at every stage of the proceeding;
3. Their right to see, hear and cross-examine all witnesses against them;
4. Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them; and
5. In juvenile delinquency proceedings, the right of the child not to be compelled to testify against himself.

B. Court-appointed counsel. If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Court in proceedings wherein the Nation is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

C. No legal counsel; motion for new trial. If the child and his parents, guardian or other legal custodian were not represented by legal counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have

the right to appeal, provided that lack of counsel alone shall not be grounds for reversal.

[NCA 01-126, § 416, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-717. Adjudicatory hearing

A. At the adjudicatory hearing, which shall be conducted as provided in the applicable rules of civil procedure, except that the applicable rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

B. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

C. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

D. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

[NCA 01-126, § 417, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-718. Mentally ill and developmentally disabled children

A. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty (30) days.

B. A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.

C. If the report of the examination made pursuant to subsection A of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

D. The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

E. The Court shall set a time for resuming the hearing on the original petition under the following circumstances:

1. The report of the examination made pursuant to subsection A of this section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

2. The child is found not to be mentally ill; or

3. The report of the examination made pursuant to subsection A of this section states that the child is developmentally disabled but not mentally ill.

F. 1. “Developmental disability” means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen (18) years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

2. “Mentally ill person” means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

3. “Mentally retarded person” means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

[NCA 01-126, § 418, approved Aug. 9, 2001.]

#### **Library References**

Indians ☞ 134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

#### **§ 1-719. Dismissal of petition**

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning deprived children or children in need of treatment, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction other previous temporary order.

[NCA 01-126, § 419, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-720. Sustaining petition**

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning deprived children or children in need of treatment, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, deprived or in need of treatment and making the child a ward of the Court. In cases concerning deprived children, evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is deprived and such evidence shall be sufficient to support an adjudication under this section.

[NCA 01-126, § 420, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-721. Temporary orders**

Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

[NCA 01-126, § 421, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**SUBCHAPTER 8. DISPOSITION****Section**

- 1-801. Dispositional hearing.
- 1-802. Social studies and reports.
- 1-803. Treatment plan.
- 1-804. Medical examination.
- 1-805. Hearing purpose.
- 1-806. Hearing informal.
- 1-807. Continuance.
- 1-808. Order of protection.
- 1-809. Child in need of treatment; disposition.
- 1-810. Deprived child; disposition.
- 1-811. Placement preferences.
- 1-812. Child in need of supervision; disposition.
- 1-813. Delinquent child; disposition.
- 1-814. Legal custody; guardianship.

## Title 6, § 1–801

## CHILDREN

### Section

- 1–815. Probation for delinquents and children in need of supervision.
- 1–816. New hearing authorized.
- 1–817. Continuing jurisdiction.
- 1–818. Orders for support.
- 1–819. Review hearings.
- 1–820. Permanency hearing.

### § 1–801. Dispositional hearing

After making an order of adjudication finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Muscogee (Creek) Nation at a hearing scheduled for that purpose.

[NCA 01–126, § 501, approved Aug. 9, 2001.]

#### Library References

- Indians ⇄134, 135, 640.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 150 to 179.

### § 1–802. Social studies and reports

A. The Court may order any agency within its jurisdiction or request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

B. After adjudication the Court may order or request, as appropriate, any agency to submit preadjudicatory social studies or reports helpful in determining proper treatment and disposition for the family.

C. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[NCA 01–126, § 502, approved Aug. 9, 2001.]

### § 1–803. Treatment plan

A. In every case the Court shall order the CFSA to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

B. The treatment plan shall be developed by CFSA after consultation with the parents unless such consultation cannot be obtained and shall contain at a minimum:

1. A brief social and family history;
2. A brief statement of the causes of the Court's exercise of its jurisdiction;
3. A statement that CFSA has consulted with the child's parents in development of the plan or a brief summary of CFSA's attempt to obtain such consultation and explanation why such attempt failed
4. The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;

5. The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;

6. The specific treatment or other social services offered by the Nation or other agency which the family should be required to accept; and

7. The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained in its home under supervision and when court supervision should cease.

C. The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[NCA 01-126, § 503, approved Aug. 9, 2001.]

**Library References**

Indians ⇄134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-804. Medical examination**

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

[NCA 01-126, § 504, approved Aug. 9, 2001.]

**Library References**

Indians ⇄134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-805. Hearing purpose**

The purpose of the dispositional hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the child.

[NCA 01-126, § 505, approved Aug. 9, 2001.]

**Library References**

Indians ⇄134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-806. Hearing informal**

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

[NCA 01-126, § 506, approved Aug. 9, 2001.]

**Library References**

Indians ⇌134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–807. Continuance**

A. The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

B. If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

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

[NCA 01–126, § 507, approved Aug. 9, 2001.]

**Library References**

Indians ⇌134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–808. Order of protection**

A. The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this subchapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to the proceeding.

B. The order of protection may require any such person:

1. To stay away from a child or his residence;
2. To permit a parent to visit a child at stated periods;
3. To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;
4. To give proper attention to the care of the home;
5. To cooperate in good faith with an agency:
  - a. Which has been given legal custody of a child;
  - b. Which is providing protective supervision of a child by court order; or
  - c. To which the child has been referred by the Court.
6. To refrain from acts of commission or omission that tend to make a home an improper place for a child; or
7. To perform any legal obligation of support.

C. When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection E of this section.

D. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Nation will be served thereby.

E. A person failing to comply with an order of protection without good cause may be found in contempt of court.

[NCA 01-126, § 508, approved Aug. 9, 2001.]

#### Library References

Indians ☞ 134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-809. Child in need of treatment; disposition

A. The CFSA may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of the CFSA:

1. In the home of the child, the home of a relative of the child, a foster home, a group home, a transitional living program, an independent living program or in any other community based child care facility under the jurisdiction or licensure of the State of Oklahoma or the CFSA appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or

2. The CFSA may place a child in need of treatment and found by a Court to be eligible to receive inpatient care and treatment in a treatment center operated by the Muscogee (Creek) Nation, another Tribe or the State of Oklahoma, Indian Health Service or other public or private mental health facility. The CFSA shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of the CFSA and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, the CFSA shall place the child as provided in paragraph 1 of this subsection.

B. In providing for the outpatient care and the treatment of children in its custody who have been adjudicated in need of treatment, the Department of Human Services shall utilize to the maximum extent possible and appropriate the services available through state or Tribal guidance centers, substance abuse programs and community-based private nonprofit agencies and organizations.

C. Nothing contained in this section shall be interpreted to require the CFSA to place a child found by a Court to be eligible for inpatient mental health treatment in a mental health facility when the CFSA determines that

such placement is inappropriate or unnecessary for the treatment needs of the child.

[NCA 01–126, § 508–A, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–810. Deprived child; disposition

A. When a child has been adjudicated to be deprived the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship pursuant to subchapter 9 of this chapter (Title 6, § 1–901 et seq.), it shall include one or more of the following provisions which the Court finds appropriate:

1. The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.

2. The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with applicable provisions of this chapter.

3. The Court may place legal custody in the CFSA or a child placement agency for placement in a family care home, or other child care facility in accordance with applicable provisions of this chapter.

4. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

B. The Court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to subchapter 9 of this chapter (Title 6, § 1–901 et seq.), and disposition of the child shall be made in accordance with subchapter 9 of this chapter.

[NCA 01–126, § 509, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–811. Placement preferences

A. **Preferences.** In making a placement of or committing legal custody of a child to some person, whether for foster care or adoption, the Court shall place the child with extended family members, as defined in Title 6, § 1–103, in the following descending order of preference:

1. The natural or adoptive parents;
2. A stepparent who is a member of the Muscogee (Creek) Nation;

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3. A member of the child's extended family;
4. A member of the same clan, band or Tribal town within Muscogee (Creek) Nation;
6. A Muscogee (Creek) Nation alternative/foster care home approved or specified by CFSA;
7. With approval of CFSA, a foster care home licensed or approved by another Tribe;
8. A public or private institution for children approved by CFSA or operated by an Indian organization which has programs suitable to meet the needs of an Muscogee (Creek) Indian child; provided that a child attending a BIA, Muscogee (Creek) Nation or other Tribal school will not be eligible for reimbursement, except that weekend care in an alternative/foster care home is reimbursable.

**B. Good cause not to follow preferences.** The Court shall find good cause not to strictly comply with the placement preferences set forth in subsection A of this section in the following circumstances:

1. Where both parents are deceased, and at least one of the parents has stated a placement preference in an affidavit filed of record with the District Court Clerk or has stated a placement preference in a will admitted into probate in the state courts, in the Nation's Court, in the court of another Indian Nation, or in a proceeding before an administrative law judge;
2. When the child is already in the custody of a stepparent who is not a member of the Nation at the time of commencement of any child custody proceeding, and the Court finds that the stepparent has been involved in the day to day care of the child for a significant period of time and that the continued custody of the child by the stepparent would be in the child's best interests;
3. When the child is under the age of fourteen (14) and has spent a significant amount of time with a relative or stepparent within one (1) of the placement preference categories set forth in subsection A of this section, has stated a preference for placement with said relative, and the Court finds that such a placement would be in the child's best interests; and
4. When the child is fourteen years of age or older and states a preference for a relative who fits within one of the placement preference categories set forth in subsection A of this section, provided that the Court determines that the placement pursuant to the wishes of the child is in the child's best interests.

**C. Parental preference and location of foster home.** In foster care placements, the Court may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying the preferences set forth in subsection A of this section, where appropriate.

**D. Considerations regarding persons within placement categories.** For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

**E. Placement with agency which must follow placement preferences.** The Court may place the child with the CFSA or with a child placement agency approved by the CFSA for further placement in lieu of a direct placement pursuant to subsection A of this section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

**F. Placement preferences applicable in state court proceedings.** State courts shall follow the placement preference rules outlined herein as authorized and required by the Federal Indian Child Welfare Act, 25 U.S.C. § 1915 and the Oklahoma Indian Welfare Act, 10 O.S. § 40.6, so long as the placement is the least restrictive setting appropriate to the particular needs of the child.

**G. Home studies; Supervision of foster homes.** The CFSA shall be responsible for supervision of children subject to juvenile proceedings, and shall be responsible for conducting home studies.

[NCA 01–126, § 510, approved Aug. 9, 2001.]

#### Library References

Indians ⇄ 134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1–812. Child in need of supervision; disposition

When a child has been adjudicated as being in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

A. The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.

B. The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with applicable provisions of this chapter.

C. The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

1. The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

2. The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

3. The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

D. The Court may place legal custody in the CFSA or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

E. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

F. The Court may commit the child to any institution or group care facility designated by the Court.

[NCA 01-126, § 511, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-813. Delinquent child; disposition

A. If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

B. The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.

C. A commitment of a child to a designated institution under applicable provisions of this chapter shall be for an indeterminate period not to exceed two (2) years.

D. The CFSA may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

E. Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

[NCA 01-126, § 512, approved Aug. 9, 2001.]

#### Library References

Indians ☞135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-814. Legal custody; guardianship

A. Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in paragraphs 4 and 5 of subsection K of Title 6, § 1-102.

B. Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined in subsection K of Title 6, § 1-102; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the Court.

C. If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

D. An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the Court at any time may require.

E. Any agency other than the department of institutions vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

F. No individual vested by the Court with legal custody of child shall remove the child from the state for more than thirty (30) days without Court approval.

G. A decree vesting legal custody of a child in an individual, institution, or agency other than the CFSA shall be for an indeterminate period, not to exceed two (2) years from the date it was entered. Such decree shall be reviewed by the Court no later than six (6) months after it is entered.

H. The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.

I. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.

[NCA 01-126, § 513, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-815. Probation for delinquents and children in need of supervision**

A. The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen (14) years of age or older but less than eighteen (18) years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty-five (45) days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

B. The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six (6) months.

C. The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied

satisfactorily with the terms and conditions of his probation for a period of two (2) years shall be released from probation, and the jurisdiction of the Court shall be terminated.

D. When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding. The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses. The hearing on the alleged violation shall be conducted as soon as possible.

E. If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this subchapter which is in the best interest of the child and the Nation.

F. If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

G. If the Court revokes the probation of a person over eighteen (18) years of age, in addition to other action permitted by this subchapter, the Court may sentence him to juvenile detention for a period not to exceed one hundred eighty (180) days during which he may be released during the day for school attendance, job training, or employment, as ordered by the Court.

[NCA 01-126, § 514, approved Aug. 9, 2001.]

#### **Library References**

Indians ☞134, 135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

#### **§ 1-816. New hearing authorized**

A. A parent, guardian, custodian, or next friend of any child adjudicated under this chapter, or any person affected by a decree in a proceeding under this subchapter, may petition the court for a new hearing on the following grounds:

1. That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

2. That irregularities in the proceedings prevented a fair hearing.

B. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

[NCA 01-126, § 515, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–817. Continuing jurisdiction**

Except as otherwise provided in this subchapter, the jurisdiction of the Court over any child adjudicated as neglected or abused, in need of supervision, or delinquent shall continue until he becomes twenty-one (21) years of age unless terminated by court order.

[NCA 01–126, § 516, approved Aug. 9, 2001.]

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–818. Orders for support**

A. Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Nation, or take other reasonable action to provide support for the child.

B. When the Nation, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispensed by court order to that agency, the Nation or to the State of Oklahoma or an agency of the State of Oklahoma if required by foster care agreement between the Nation and the State of Oklahoma or an agency of the State of Oklahoma or as otherwise necessary by law or appropriate in the circumstances. In all cases of placement with a particular family, the contribution shall be paid to that family by the Court Clerk subject to the supervision of the Court to prevent waste or misuse of such funds.

[NCA 01–126, § 517, approved Aug. 9, 2001.]

**Cross References**

Review of child’s disposition following termination of the parent-child relationship, see Title 6, § 1–909.

**Library References**

Indians ⇨134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1–819. Review hearings**

**A. Purpose.** After proper disposition and implementation of a family treatment plan, a review hearing shall be conducted to review the progress of the family treatment plan, the health and welfare of the child(ren) and the safety of the child(ren)’s placement.

1. A review hearing shall be scheduled based upon the recommendation of the child treatment worker or at the request of any party.

2. The review hearing shall be scheduled at a minimum of once every six (6) months.

3. The review hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered.

**B. Reports.** The CFSA through a child treatment worker shall prepare a written report for such purpose of review.

1. In every case CFSA shall prepare a written report for such review and include, without limitation, the status of the health and welfare of the child, parents' compliance with the family treatment plan, any recommendations of the child treatment worker and any other relevant reports.

2. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the review hearing. Failure to file reports at least five (5) days prior to a review hearing shall be grounds for contempt of court.

[NCA 01-126, § 518, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

#### Library References

Indians ☞ 134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-820. Permanency hearing

**A. Reasonable efforts.** The CFSA shall make reasonable efforts to eliminate the need for removing the child from his home and to make a timely reunification unless there has been a legal determination that reasonable efforts are not required.

#### **B. Hearings**

1. A permanency hearing shall be scheduled within thirty (30) days when there is a determination by the Court that reasonable efforts are not required.

2. The Court shall conduct permanency hearings the earliest date of either twelve (12) months after adjudication or twelve (12) months after the child has been removed from his/her home for sixty (60) days.

3. The permanency hearings will determine the permanency plan for the child which includes whether, and if applicable, when the child will be returned to the parent, placed for adoption, when a petition for termination will be filed, referred to legal guardianship, or placed in another permanent living arrangement.

**C. Reports.** The CFSA through a child treatment worker shall prepare a written report for such purpose.

1. In every case CFSA shall prepare a written report for such hearing and include, without limitation, the status of the health and welfare of the child, parents' compliance with the family treatment plan, any recommendations of the child treatment worker and any other relevant reports.

2. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the permanency hearing. Failure to file reports at least five (5) days prior to a review hearing shall be grounds for contempt of court.

[NCA 01–126, § 518, approved Aug. 9, 2001; amended by NCA 06–059, § 1, approved May 8, 2006.]

**Library References**

Indians ☞ 134, 135, 640.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**SUBCHAPTER 9. TERMINATION OF PARENTAL RIGHTS**

**Section**

- 1–901. General provisions.
- 1–902. Termination of parental rights of father or putative father of child born out of wedlock.
- 1–903. Notice of hearing to terminate parental rights.
- 1–904. Expert testimony.
- 1–905. Burden of proof in termination proceedings.
- 1–906. Appointment of counsel.
- 1–907. Effect of decree.
- 1–908. Custody with authority to consent to adoption following termination.
- 1–909. Review of child’s disposition following termination of the parent-child legal relationship.
- 1–910. Appeals.
- 1–911. Traditional custodian’s and grandparent’s rights.

**Cross References**

Deprived child, disposition decree not terminating parent-child relationship, see Title 6, § 1–810.

**§ 1–901. General provisions**

**A. Adjudication not grounds for termination.** The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights.

**B. Grounds for termination.** The Court may terminate the rights of a parent to a child in any one of the following situations:

**1. Consent.** The Court may terminate parental rights upon a written relinquishment by a parent, including a parent who is a minor, acknowledged as provided in Title 6, § 1–1006, who desires to terminate his parental rights; provided that the court finds that such termination is in the best interests of the child.

**2. Abandonment.** The Court may terminate parental rights upon a finding that a parent who is entitled to custody of the child has abandoned the child. For purposes of this subsection the term “abandonment” includes, but is not limited to, the following:

a. The parent has willfully left the child alone or in the care of another who is not the parent of the child without identifying the child or furnishing a means

of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,

b. The parent has voluntarily left the child alone or has placed the child informally and without benefit of Tribal custom in the care of another person who is not the parent and expressed a willful intent by words, actions, or omissions not to return for the child, or

c. The parent fails to maintain a significant relationship with the child through visitation or communication for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained a significant relationship with the child.

**3. Failure to correct conditions.** The Court may terminate parental rights upon a finding that:

a. The child is deprived as defined in this chapter; and

b. Such condition is caused by or contributed to by acts or omissions of his parent; and

c. The parent has failed to show that the condition which led to the removal of custody of the child from the parent has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; and

d. The Court determines that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious emotional or physical injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In determining this, the Court shall consider, but not be limited to, the following factors:

i. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child pursuant to paragraph 8 of this subsection;

ii. Conduct towards the child or sibling of the child of a physically or sexually abusive nature pursuant to paragraph 5 of this subsection;

iii History of violent behavior;

iv. A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

v. Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;

vi. The evidence of abuse or neglect of the child or siblings of the child by the parent;

vii. Reasonable efforts by child care agencies which have been unable to rehabilitate the parent or parents.

**4. Failure to contribute to support.** The Court may terminate parental rights upon a finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity.

**5. Conviction related to child abuse.** The Court may terminate parental rights upon a finding of a conviction in a criminal action pursuant to state or federal law or a finding in a deprived child action either that:

a. The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or

b. The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse.

**6. Conviction related to death of child's sibling.** The Court may terminate parental rights upon a finding of a conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling.

**7. Long-term incarceration.** If in the best interests of the child, the Court may terminate parental rights to a child which has been adjudicated as deprived and which has been placed outside of the home of a natural or adoptive parent, guardian or extended family member, if the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past. Incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights.

**8. Mental illness.** If in the best interests of the child, the Court may terminate parental rights to a child which has been adjudicated as deprived and which has been placed outside of the home of a natural or adoptive parent,

guardian or extended family member, if the parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; the continuation of parental rights would result in harm or threatened harm to the child; and the mental illness or mental deficiency of the parent is such that will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve. A finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

a. In considering any factors in subsection (B) of this section in terminating the parent-child relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

b. The Prosecutor will file petitions to terminate the parental rights of parents for any child who has been in the foster care system for fifteen (15) of the most recent twenty-two (22) months or there is a finding that reasonable efforts are not required. A termination of parental rights petition does not have to be filed in the cases which meet the following criteria for exceptions:

- i. The child is being cared for by a relative;
- ii. The Nation has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child;
- iii. The Nation has not provided (when reasonable efforts are required) the services the Nation deems necessary for the safe return of the child to the child's home.

**C. Persons authorized to petition for termination.** The Prosecutor is authorized to petition the Court to terminate the parental rights of a parent or the parents of the child for any of the grounds listed in subsection B of this section. A parent consenting to a step-parent adoption, legal guardian of a child or other person having legal custody of the child to be adopted may petition the Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs 1, 2 or 4 of subsection B of this section. A prior finding by a court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

[NCA 01-126, § 601, approved Aug. 9, 2001.]

#### Cross References

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

#### Library References

Indians ⇌134.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

**§ 1-902. Termination of parental rights of father or putative father of child born out of wedlock**

**A. Termination of parental rights of father or putative father.** The Prosecutor, child's mother when relinquishing the child for adoption or consenting to a step-parent adoption, the legal guardian of the child or other person having legal custody of a child to be adopted may petition for termination of the parental rights of a father or putative father of a child born out of wedlock, provided that the notice requirements of subsection B of Title 6, § 1-903 are followed. The Court shall terminate parental rights if such action is supported by the evidence pursuant to subsection D of this section.

**B. Fathers and putative fathers entitled to notice.** For purposes of identifying fathers and putative fathers of children born out of wedlock entitled to notice pursuant to subsection B of Title 6, § 1-903, the terms "father" and "putative father" shall include:

1. Any person adjudicated by a court in this state to be the father of the child;
2. Any person who is recorded on the child's birth certificate as the child's father;
3. Any person who is openly living with the child and the child's mother at the time the proceedings is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;
4. Any person who has been identified as the child's father by the mother in a sworn statement;
5. Any person who was married to the child's mother within ten (10) months prior or subsequent to the birth of the child; and
6. Any person who has filed with the Oklahoma State Paternity Registry an instrument acknowledging paternity of the child.

**C. Oklahoma Putative Father Registry.** The Court, as necessary, shall order the Oklahoma Department of Human Services to provide the person or agency filing the petition with the name and address of any person on the registry who claims to be the father of the child.

**D. Court decision.** The Court may make one of the following decisions after the hearing to terminate parental rights of a father or putative father of a child born out of wedlock:

1. The Court shall terminate the rights of a father or putative father if he fails to appear at the hearing or has waived notice pursuant to subparagraph c of paragraph 2 of subsection B of Title 6, § 1-903; or
2. The Court may, if it is in the best interest of the child accept a relinquishment or consent to adoption executed by the father or putative father of the child; or
3. The Court may, if it is in the best interest of the child, determine that the father or putative father has failed to establish parental rights to the child and

may terminate any parental rights which such father or putative father may claim if:

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

b. At the hearing he fails to prove that he is the father of the child; or

c. Having established paternity, he fails to prove that he has exercised parental rights and duties toward the child, unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child after having made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child.

4. The Court may, if it is in the best interest of the child terminate the parental rights of the father or putative father on grounds set forth in Title 6, § 1-901 of this Title; or

5. The Court may, if it is in the best interest of the child grant custody of the child to the father or putative father, if the court determines such person to be the father of the child.

[NCA 01-126, § 602, approved Aug. 9, 2001.]

#### Cross References

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

#### Library References

Indians ⇄ 134.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

### § 1-903. Notice of hearing to terminate parental rights

**A. General requirements.** A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least twenty (20) days after the receipt of such notice, except with the consent of the parent, if known. If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last known address of the parent. The notice shall be published one (1) day a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the action to terminate parental rights is brought, and once in the *Muscogee Nation News*. Nothing in this section shall prevent a Court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

**B. Special notice provisions for father or putative father of child born out of wedlock.**

**1. Notice requirements.** The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to subsection A of this section. The notice shall also apprise the father or putative father of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody or guardianship or in the child's adoption.

**2. Exceptions to notice requirements.** The following are exceptions to the notice requirements contained in paragraph 1 of this subsection:

a. The Court may waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock if the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this subparagraph shall not constitute grounds to challenge an adoption of the child.

b. The Court may waive notice when the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, the Court may order that notice be given by publication as provided in subsection A of this section and a copy mailed to the last-known address, if known, of such father or putative father. When notice is given by publication the order terminating parental rights shall not become final for a period fifteen (15) days from the date of the order.

c. A person may waive his right to notice under this subsection. Such waiver signed by such person shall include a statement affirming that the persons signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and Title 6, § 1-901.

[NCA 01-126, § 603, approved Aug. 9, 2001.]

#### **Cross References**

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

#### **Library References**

Indians ⇄ 134, 519.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### **§ 1-904. Expert testimony**

A. Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the court funds.

B. All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.

[NCA 01-126, § 604, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 520(1).  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-905. Burden of proof in termination proceedings

A finding resulting in termination of parental rights must be supported by clear and convincing evidence.

[NCA 01-126, § 605, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 520(2).  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-906. Appointment of counsel

A. After a petition for termination of a parent-child legal relationship is filed pursuant to this subchapter, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney.

B. An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

[NCA 01-126, § 606, approved Aug. 9, 2001.]

#### Library References

Indians ☞134, 500.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

### § 1-907. Effect of decree

A. The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child, the parent's right to visit the child, the parent's right to control the child's training and education, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. After termination the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

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B. Nothing herein shall in any way affect the right of the child to inherit from the parent or disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Nation, any agency, any state, or the United States.

[NCA 01–126, § 607, approved Aug. 9, 2001.]

**Library References**

Indians ☞134.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

**§ 1–908. Custody with authority to consent to adoption following termination**

A. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:

1. Leave the child in the legal custody of the other parent and discharge the proceedings; or
2. Make any other disposition provided in subchapter 8 of this chapter that the Court finds appropriate.

B. After parental rights of both living parents have been terminated, a Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but a Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the parents have been terminated in accordance with the provisions of this subchapter.

[NCA 01–126, § 608, approved Aug. 9, 2001.]

**Library References**

Indians ☞134.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

**§ 1–909. Review of child’s disposition following termination of the parent-child legal relationship**

A. The Court, at the conclusion of a hearing following which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

B. Review hearings shall be conducted pursuant to Title 6, § 1–818.

[NCA 01–126, § 609, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 524.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-910. Appeals**

A. Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

B. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of and paid from the court fund.

[NCA 01-126, § 610, approved Aug. 9, 2001.]

**Library References**

Indians ☞134, 540.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 1-911. Traditional custodian's and grandparent's rights**

A. No dispositional order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party.

B. The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

[NCA 01-126, § 612, approved Aug. 9, 2001.]

**SUBCHAPTER 10. ADOPTIONS**

**Section**

- 1-1001. Jurisdiction over adoptions.
- 1-1002. Purpose of adoptions.
- 1-1003. Types of adoptions.
- 1-1004. Persons eligible to adopt by statutory process.
- 1-1005. Consent to statutory adoption.
- 1-1006. Voluntary relinquishment.
- 1-1007. When consent of parents unnecessary.
- 1-1008. Consent of child.
- 1-1009. Petition.
- 1-1010. Investigation.
- 1-1011. Adoption hearing.
- 1-1012. Report and final decree of adoption.

**Section**

- 1–1013. Contents of adoption order.
- 1–1014. Effect of final decree of statutory adoption.
- 1–1015. Records and hearings confidential.
- 1–1016. Certificates of adoption.
- 1–1017. Foreign decree.
- 1–1018. Adoption of adults.
- 1–1019. Appeals.

**§ 1–1001. Jurisdiction over adoptions**

The Court shall possess jurisdiction over adoptions of children pursuant to the provisions of Title 6, §§ 1–301 and 1–302. The Court may exercise jurisdiction over an adoption between two (2) adults who submit to the jurisdiction of the Court regardless of residence or domicile.

[NCA 01–126, § 701, approved Aug. 9, 2001.]

**Library References**

Indians ☞138, 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 1–1002. Purpose of adoptions**

The purpose of an adoption is to establish a formal and legal family relationship between two (2) or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this chapter shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

[NCA 01–126, § 702, approved Aug. 9, 2001.]

**Library References**

Indians ☞138.  
Westlaw Topic No. 209.

**§ 1–1003. Types of adoptions**

There shall be three (3) types of adoptions recognized by the Muscogee (Creek) Nation, namely:

1. Statutory adoptions pursuant to this subchapter;
2. Statutory adoptions under the laws of some state or Nation having jurisdiction over the parties and the subject matter; and
3. Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Nation’s common law until such time as the proper procedures for such adoptions are written down as a part of the Code of Laws of the Muscogee (Creek) Nation, at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by statutory law of the Muscogee (Creek) Nation, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedent’s estates.

[NCA 01–126, § 703, approved Aug. 9, 2001.]

Library References

Indians ↻138.  
Westlaw Topic No. 209.

**§ 1-1004. Persons eligible to adopt by statutory process**

A. The following persons are eligible to adopt a child pursuant to statutory law, subject to the placement preferences of § 1-811 of this Title:

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

[NCA 01-126, § 704, approved Aug. 9, 2001.]

Library References

Indians ↻138.  
Westlaw Topic No. 209.

**§ 1-1005. Consent to statutory adoption**

A. Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court in accordance with the following requirements:

1. Consent shall be given by both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.
2. A parent less than sixteen (16) years of age may give his consent only with the written consent of one of the minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.
3. If both parents be deceased, or if their parental rights have been terminated by judicial decree, then one of the following may consent to the adoption: the Indian custodian having physical custody of said child for the preceding six (6) month period; the legal guardian of the person of the child; the guardian ad litem of the child if authorized to exercise consent by court order; the executive head of an agency having custody of the child by judicial decree with the specific authority granted by the Court to consent to the adoption of the child; or any person having legal custody of a child by court order, provided that the Court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the adoption petition.
4. Where any parent or Indian custodian voluntarily consents to an adoption or termination of parental rights, such consent shall not be valid unless executed 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 and were fully understood by the parent or Indian custodian. The Court shall certify that the parent or Indian custodian either

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fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

5. Any consent given prior to or within ten (10) days after the birth of a child shall not be valid.

B. Any consent given for the adoption of or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

C. After the entry of a final decree of adoption the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the Court to vacate such decree, provided that the adoption decree was entered no more than two (2) years preceding the filing of the petition to vacate. Upon a finding that such consent was obtained through fraud or duress, the Court shall vacate such decree and return the child to the parent.

[NCA 01–126, § 705, approved Aug. 9, 2001.]

### Library References

Indians ☞138.  
Westlaw Topic No. 209.

## § 1–1006. Voluntary relinquishment

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish any rights he may have to the care, custody, and control of the child. A relinquishment shall be made by filing a petition in the District Court with notice to the CFSA, Prosecutor, Indian custodians, and the parent(s) who is not a petitioner. The Indian custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

[NCA 01–126, § 706, approved Aug. 9, 2001.]

### Cross References

Consent to termination of parental rights, see Title 6, § 1–901.

### Library References

Indians ☞138.  
Westlaw Topic No. 209.

## § 1–1007. When consent of parents unnecessary

**A. Termination prior to filing adoption petition.** Adoption of a child may be decreed without parental consent if the parent has had his parental or custodial rights terminated by a decree of a Court of competent jurisdiction prior to the filing of the adoption petition. A certified copy of the termination order shall be attached to the petition.

**B. Termination based on abandonment or failure to provide support.** Adoption of a child may be decreed without parental consent if a consenting

parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding based on the grounds of abandonment set forth in paragraph 2 of subsection B of Title 6, § 1-901 or based on the grounds of failure to contribute to support as set forth in paragraph 4 of subsection B of Title 6, § 1-901.

**C. Termination based on failure of father or putative father to establish parental rights.** Adoption of a child born out of wedlock may be decreed without consent of the father or putative father when the mother who has custody of the child executes a relinquishment for the purpose of the adoption, and the person or agency to whom such relinquishment was made secures the termination of parental rights by filing a petition for the termination of the parental rights of the father or putative father based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to Title 6, § 1-902, unless such rights have been previously terminated or relinquished. Adoption of a child born out of wedlock may also be decreed without parental consent if a consenting parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding, based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to Title 6, § 1-902.

**D. Requirements for application for termination of parental rights for adoption purposes.** The application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the grounds for the termination of parental rights, and notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why his consent is necessary. The application and notice shall be served on the parent whose termination of rights is sought pursuant to Title 6, § 1-903. The application shall be set for hearing at a date and time certain and must be at least twenty-four (24) hours prior to the hearing on the adoption.

[NCA 01-126, § 707, approved Aug. 9, 2001.]

#### Library References

Indians ☞138.  
Westlaw Topic No. 209.

### § 1-1008. Consent of child

Whenever a child be a sufficient maturity and understanding the Court may, and in every case of a child over ten (10) years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

[NCA 01-126, § 708, approved Aug. 9, 2001.]

#### Library References

Indians ☞138.  
Westlaw Topic No. 209.

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**§ 1-1009. Petition**

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

A. The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.

B. Their relationship with the child, if any, and their Tribal affiliation by blood and membership, if any.

C. When and from whom the petitioners acquired or intend to acquire physical custody of the child.

D. The names of the child's biological parents and their Tribal affiliation by blood and membership, including Tribal roll numbers, if known.

E. The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and Tribal affiliation by blood and membership, including Tribal roll number, if known.

F. The name used for the child in the proceeding, and, if a change in name is desired, the new name.

G. A statement that the petitioners desire that the relationship of parent and child be established between them and the child.

H. A full description and statement of the value of all property owned or possessed by the child.

I. The facts, if any, which excuse the consent of the parents or either of them to the adoption.

J. Any required consents to the adoption or termination order may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

K. The facts which bring the child within the jurisdiction of the Court.

[NCA 01-126, § 709, approved Aug. 9, 2001.]

**Library References**

Indians ☞138, 511.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 1-1010. Investigation**

A. Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

1. By the agency having custody or legal guardianship of the child; or
2. In other cases, by the state, Bureau of Indian Affairs, or CFSA; or
3. By a person qualified by training or experience, designated by the Court.

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

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

D. The Court may order agencies named in subsection A of this section located in one or more jurisdictions to make separate investigations on separate parts of the inquiry, as may be appropriate.

E. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefore.

F. Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six (6) months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.

G. Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the CFSA and the Prosecutor.

[NCA 01-126, § 710, approved Aug. 9, 2001.]

#### **Library References**

Indians ☞ 138, 411.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1-1011. Adoption hearing**

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by an attorney or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the CFSA, Federal agencies, or other agencies to provide services to

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assist in the placement and the care of the child, or, in case of need, refer the matter to the CFSA and Prosecutor for the purpose of determining whether an involuntary juvenile petition should be filed.

[NCA 01–126, § 711, approved Aug. 9, 2001.]

### **Library References**

Indians ☞138, 518.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–1012. Report and final decree of adoption**

If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request Tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

[NCA 01–126, § 712, approved Aug. 9, 2001.]

### **Library References**

Indians ☞138, 527, 534.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–1013. Contents of adoption order**

The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and a statement that the relationship of parent and child exists between the petitioners and the child.

[NCA 01–126, § 713, approved Aug. 9, 2001.]

### **Library References**

Indians ☞138, 527.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–1014. Effect of final decree of statutory adoption**

A. After a final decree of adoption is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural

relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).

B. After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Nation by virtue of his birth to said natural parents.

C. Unless the Indian custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any time within two (2) years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural Indian custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

[NCA 01-126, § 714, approved Aug. 9, 2001.]

#### Library References

Indians ☞138.  
Westlaw Topic No. 209.

### § 1-1015. Records and hearings confidential

Unless the Court shall otherwise order:

A. All hearings held in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including Indian custodians, representatives of the CFSA when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, Indian custodians, and the CFSA.

B. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

1. Upon order of the Court for good cause shown.
2. Upon the adopted person reaching the age of eighteen (18), the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including Tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

3. The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity by affidavit, the traditional custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

4. For the purpose of obtaining the enrollment of the child with another Indian Nation, the Court may upon request of an enrollment officer of that Nation, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Nation subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Nation for an in camera review only, or allow such Judge to review the record in the District Court, in camera, for the purpose of said Judge certifying to his Nation that the child is eligible for membership in that Nation.

[NCA 01–126, § 715, approved Aug. 9, 2001.]

#### **Library References**

Indians ⇄ 138, 519.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–1016. Certificates of adoption**

A. For each adoption or annulment of adoption, the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

B. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

C. One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judge's certificate showing:

1. The original and adoptive name and Tribal affiliation of the child;
2. The names, addresses, Tribal affiliation and degree of blood of the biological parents when known;
3. The names and addresses of the adoptive parents;
4. The identity of any agency having files or information relating to the adoptive placement; and

5. Any affidavit of the biological parent requesting that their identity remain confidential.

[NCA 01-126, § 716, approved Aug. 9, 2001.]

**Library References**

Indians ☞138.  
Westlaw Topic No. 209.

**§ 1-1017. Foreign decree**

When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other state or Nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined.

[NCA 01-126, § 717, approved Aug. 9, 2001.]

**Library References**

Indians ☞138.  
Westlaw Topic No. 209.

**§ 1-1018. Adoption of adults**

A. An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including Tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

B. Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

[NCA 01-126, § 718, approved Aug. 9, 2001.]

**Library References**

Indians ☞138.  
Westlaw Topic No. 209.

**§ 1-1019. Appeals**

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

[NCA 01-126, § 719, approved Aug. 9, 2001.]

Library References

Indians ☞138, 542.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 11. FOSTER CARE

Section

- 1–1101. Purpose and applicability.
- 1–1102. License required.
- 1–1103. Issuance of licenses.
- 1–1104. Denial of application or revocation of license.
- 1–1105. Licensing appeals process.
- 1–1106. Tribal/state agreements.

**§ 1–1101. Purpose and applicability**

A. The purpose of this subchapter is the protection of the best interests of Muscogee (Creek) children, and the promotion of the stability and security of the Muscogee (Creek) Nation and Muscogee (Creek) families, by the establishment of standards and procedures for the licensing of Tribal foster homes.

B. This subchapter applies only to the licensing of temporary, as opposed to permanent, care of Muscogee (Creek) children.

C. The CFSA shall have authority to place a child in a Tribal foster home only when granted to the CFSA by one of the following: an order of a state court having jurisdiction of the child custody proceeding, an order of a Tribal court or CFR Court having jurisdiction of the child custody proceeding, the voluntary written consent of a child’s parent having custody, or the written consent of a legal guardian or Indian custodian, other than a parent.

[NCA 01–126, § 801, approved Aug. 9, 2001.]

Library References

Indians ☞136.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 154 to 176.

**§ 1–1102. License required**

A. A Muscogee (Creek) household must be licensed by the Muscogee (Creek) Nation Children and Family Services (CFSA) as a foster home, if it is engaged in twenty-four (24) hour care of an Indian child who is not the biological child of at least one head of the household.

B. The CFSA shall license any other Muscogee (Creek) home desiring to care for Indian foster children, provided that Tribal licensing standards are met.

C. A foster home licensed by the Muscogee (Creek) Nation shall not provide placements for more than one (1) agency at a time without a written agreement delineating the responsibilities of all parties involved.

[NCA 01–126, § 802, approved Aug. 9, 2001.]

## Library References

Indians ⇨136, 226.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 140 to 149, 154 to 176.

**§ 1-1103. Issuance of licenses**

A. Any Indian family and any Muscogee (Creek) family living within the boundaries of the State of Oklahoma may apply for certification as a foster family for Tribal children.

B. The CFSA shall prepare a written statement regarding procedures in the application and licensing process, which shall be given to every applicant.

C. The CFSA shall perform a foster home study in accordance with established procedures of the CFSA to determine if the applicant meets the minimum foster home standards.

D. The CFSA shall issue a license to a family for the care of foster children:

1. When it has determined that the family meets Tribal licensing standards; and

2. When the applicant has signed an agreement concerning the rights and duties of a Tribal foster home and the rights and duties of the CFSA. Such agreement shall include, but not be limited to the rights and responsibilities of the foster parent, the rights and responsibilities of the CFSA, the rights and responsibilities of the foster child, the rights and responsibilities of the child's parents/custodians, arrangements for financial assistance, if available, and a statement concerning the right of the CFSA to evaluate the foster home.

E. Every license shall specify the kind of license and the maximum number of foster children to be provide care at any one given time.

F. The CFSA must be notified, in advance, of any changes that would affect the terms of the license, such as a change of address or additional persons in the home.

G. A provision shall be made for the licensing of foster homes for specific children who require extraordinary care or services or have special needs. This type home may not otherwise be eligible for regular certification according to foster home standards set forth in this subchapter. This provision shall not be construed as replacing the regular Tribal foster home standards and placement procedures.

[NCA 01-126, § 803, approved Aug. 9, 2001.]

## Library References

Indians ⇨136, 226.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 140 to 149, 154 to 176.

**§ 1-1104. Denial of application or revocation of license**

A. The CFSA may deny a Tribal foster home application if it finds that it does not meet the standards for foster homes and may suspend or revoke a Tribal foster home license for good cause. The CFSA shall notify in writing the

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Tribal foster home applicant or the foster home of the denial of the application or the suspension or revocation of the license. The notification shall state the grounds for the action taken.

B. The CFSA shall send a notice of the closure of any Tribal foster home to any entities financially responsible, including, but not limited to, the State of Oklahoma Department of Human Services, Child Welfare Division.

C. The CFSA shall notify any Tribal foster home applicant whose license is denied, suspended, or revoked.

D. The notification to the applicant or licensee shall state the grounds for the action, and shall inform the applicant of his right to appeal the action as set forth in by Title 6, § 1-1105.

[NCA 01-126, § 804, approved Aug. 9, 2001.]

### **Library References**

Indians ☞136, 226, 416.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 151 to 179.

## **§ 1-1105. Licensing appeals process**

A licensing appeals process is set forth in this section to hear any dispute concerning the denial, suspension, or revocation of a Tribal foster home license as provided for in the Children and Family Services policies and procedures:

A. An applicant/licensee may appeal in writing to the Manager of the Children and Family Services Administration regarding any denial, suspension, or revocation.

B. The appeal will be forwarded for review by the CFSA Administrative Board.

C. All decisions of the Board shall be final.

[NCA 01-126, § 805, approved Aug. 9, 2001.]

### **Library References**

Indians ☞136, 429.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 1-1106. Tribal/state agreements**

The Principal Chief is authorized to enter into agreements with the State of Oklahoma concerning state financial assistance and the provision of other state resources, subject to the approval of the Muscogee (Creek) National Council.

[NCA 01-126, § 806, approved Aug. 9, 2001.]

### **Library References**

Indians ☞139, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 54 to 55, 59.

## CHAPTER 2. FAMILY RELATIONS—MARRIAGE

### Section

- 2-101. Definitions; generally.
- 2-102. Marriage defined.
- 2-103. Consanguinity; clan members.
- 2-104. Who may marry.
- 2-105. License required.
- 2-106. License fee; premarital counseling.
- 2-107. Physician's certificate; filing; contents.
- 2-108. Application requirements.
- 2-109. Issuance of license; contents; waiting period; delivery to person officiating; accompanying statement.
- 2-110. Solemnization of marriages.
- 2-111. Endorsement and return of license.
- 2-112. Records; return; inspections.
- 2-113. Copy of record; admission as evidence.

### Historical and Statutory Notes

NCA 01-163, § 2, §§ 2-101, 102, provide:

“Section 2-101. Findings. The National Council finds:

“A. By an Act of the National Council approved October 22, 1881, the Muscogee (Creek) Nation statutorily provided for marriages between citizens, established authority for solemnization of marriages and granted the District Court the jurisdiction and authority to dissolve the marriage contract.

“B. The power to regulate the domestic relations of its members is vested in the Muscogee (Creek) Nation.

“C. The power to regulate domestic relations is a sovereign function.

“D. By Treaty beginning with the Treaty of 1790, signed August 7, 1790, through and including the Treaty with the Creeks of 1866 ratified on July 19, 1866, the Muscogee (Creek) were secured in the unrestricted right of self-government.

“E. The Muscogee (Creek) Nation has a legitimate and rightful concern with persons domiciled within its borders in relationship to marriage and can determine who may assume and who may occupy the matrimonial relation within its borders.

“Section 2-102. Title and Codification.

“This Act shall be entitled ‘Family Relations–Marriage’ and shall be placed in Chapter Two of Title 6 ‘Children and Family Relations’ of the Code of Laws of the Muscogee (Creek) Nation.”

### § 2-101. Definitions; generally

The following words shall have the following definitions for purposes of this chapter:

A. “Court Clerk” means the Court Clerk of the Muscogee (Creek) Nation District Court, or his or her designees.

B. “District Judge” means a Judge of the Muscogee (Creek) Nation District Court.

[NCA 01-163, § 2-103, approved Sept. 7, 2001.]

### § 2-102. Marriage defined

Marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law.

[NCA 01-163, § 2-104, approved Sept. 7, 2001.]

## Library References

Indians ⇨131.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 176.

**§ 2–103. Consanguinity; clan members**

Marriages prohibited by traditional law and marriages between ancestors and descendants of any degree, or a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited; provided, that any marriage of first cousins performed within the jurisdiction of another Indian Nation or state authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in the Muscogee (Creek) Nation as of the date of such marriage.

[NCA 01–163, § 2–105, approved Sept. 7, 2001.]

## Library References

Indians ⇨131.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 176.

**§ 2–104. Who may marry**

**A. Persons aged eighteen years and older.** Any unmarried person of the age of eighteen (18) or upwards and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex.

**B. Persons under age of eighteen years.** No person under the age of eighteen (18) years shall enter into the marriage relation, nor shall the Court Clerk issue any marriage license pursuant to Title 6, §§ 2–105 and 2–109, unless one of the following requirements is met:

1. The parent or guardian of such underage applicant expressly gives consent and authority for the marriage in the presence of the Court Clerk; or

2. The parent or guardian of such underage applicant executes a written consent to the marriage that is acknowledged in person before the Court Clerk; or

3. The written and verified consent of a parent or guardian is presented to the Court Clerk with an accompanying medical certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, stating that such parent or guardian is unable by reason of health or incapacity to be present in person; or

4. The written consent of a parent or guardian on active duty with the Armed Forces of the United States is presented to the Court Clerk, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths, accompanied by a certificate executed by a commissioned officer in command of said applicant, to the effect that said parent or guardian is on active duty in the Armed Forces of the United States; or

5. The affidavits of three (3) reputable persons are presented to the Court Clerk, stating that both parents of said minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for said minor, in which case the District Judge may in his or her discretion consent to said marriage in the same manner as in all cases in which consent may be given by a parent or guardian and with the same effect.

**C. Retention of documents used for marriage license to a minor.** Any certificate and written permission considered for purposes of issuance of a marriage license to a minor shall be retained by the official issuing the marriage license.

**D. Persons under age of sixteen.** Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation.

**E. Authorization of marriage of minors under certain circumstances.** This section shall not be construed to prevent the District Judge from authorizing the marriage of persons under the ages herein mentioned, in settlement of suits for seduction or paternity; and the District Judge may also authorize the marriage of persons under the ages herein mentioned when the unmarried female is pregnant, or has given birth to an illegitimate child, whether, or not any suits for seduction or paternity have been brought; provided that no Court shall authorize the marriage of any male under the age of sixteen (16) or any female under the age of sixteen (16) when the unmarried female is pregnant unless at least one (1) parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license, and if they are not present said parent, guardian, or custodian may be given notice of the hearing at the discretion of the Court.

**F. Incestuous marriage prohibited.** No marriage may be authorized when such marriage would be incestuous under this chapter.

**G. Same gender marriage prohibited.** A marriage between persons of the same gender performed in another Indian Nation or state shall not be recognized as valid and binding in the Muscogee (Creek) Nation.

[NCA 01–163, § 2–106, approved Sept. 7, 2001.]

#### Library References

Indians ⇄131.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 176.

#### § 2–105. License required

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Muscogee (Creek) Nation without a license being first issued by the Court Clerk or by other licensing authority under the law of any other jurisdiction, authorizing the marriage between the persons named in such license.

[NCA 01–163, § 2–107, approved Sept. 7, 2001.]

## Library References

Indians ⇨131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

**§ 2–106. License fee; premarital counseling**

**A. Fees.** The Court Clerk shall charge a license fee of twenty-five and no/100 dollars (\$25.00) for issuance of a marriage license except as provided in subsection B of this section.

**B. Premarital counseling as basis for fee reduction.** The Court Clerk shall reduce the fee for a marriage license to persons who have successfully completed a premarital counseling program meeting the conditions specified by this section. A premarital counseling program shall be conducted by a health professional or an official representative of a religious institution. Upon successful completion of the program, the counseling program provider shall issue to the persons a certificate signed by the instructor of the counseling program. The certificate shall state that the named persons have successfully completed the premarital counseling requirements. For purposes of this section, the term “health professional” means a person licensed or certified by the Muscogee (Creek) Nation to practice psychiatry or psychology; a licensed social worker with experience in marriage counseling; a licensed marital and family therapist; or a licensed professional counselor.

[NCA 01–163, § 2–108, approved Sept. 7, 2001; amended by NCA 03–032, § 1, approved Feb. 4, 2003]

## Library References

Indians ⇨131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

**§ 2–107. Physician’s certificate; filing; contents**

**A. Standard serological test.** A standard serological test shall be a laboratory test for syphilis, approved by the State Commissioner of Public Health, and may be obtained on request from the Oklahoma State Department of Public Health free of charge, or at a laboratory approved for this purpose by said Oklahoma State Department of Public Health or at a laboratory approved for this purpose by the Muscogee (Creek) Nation Health Services Department.

**B. Serological examination; certificate.** Any person seeking to obtain a marriage license shall first file with the Court Clerk a certificate or affidavit from a duly-licensed physician, licensed to practice within the State of Oklahoma, stating that each party to the marriage contract has been given a standard serological examination, as may be necessary for the discovery of syphilis, made not more than thirty (30) days prior to the date of such application to obtain a marriage license, and that, in the opinion of the physician, the persons named therein are not infected with syphilis, or, if infected, said syphilis is not is a stage which may be communicable to the marriage partner.

**C. Laboratory statement and report of test.** Each physician’s statement shall be accompanied by a statement from the person in charge of the laboratory

making the test, or from some other person authorized to make such statement, setting forth the name of the test, the date it was completed and the name and address of the person whose blood was tested, but not stating the result of the test. The physician's statement and the laboratory statement shall be on the same form sheet. Upon said form a detailed report of the laboratory test, showing the result of the test, shall be transmitted by the laboratory to the physician who, after examining it and if he deems it desirable, discussing it with either or both of the proposed marital parties, shall file it with the Oklahoma State Health Officer, or the Oklahoma State Superintendent of Health, where it shall be held in absolute confidence and shall not be open to public inspection; provided that it shall be produced for evidence at a trial or proceeding in a court of competent jurisdiction, involving issues in which it may be material and relevant, on an order of the judge of such court requiring its production.

**D. District Court order dispensing with requirements.** Because of an emergency or other cause shown by affidavit or other proof of both of the parties over the age of twenty-five (25) years, the District Judge, if satisfied by medical testimony, that neither the health of the individuals nor the public health and welfare will be injuriously affected thereby, may make an order, on joint application of both the parties desiring the marriage license, dispensing with those requirements of this section which relate to the filing with the Court Clerk by either or both of the parties of the physician's certificates and the laboratory statements or, the said affidavits and statements having been filed, extending the thirty-day period following the examination and test to not later than ninety (90) days after such examination and test. The order shall be accompanied by a memorandum in writing from the District Judge stating the reasons for granting said order. Application for such extension may be made before, on or after the expiration of such thirty-day period. The order in the accompanying memorandum shall be filed with the Court Clerk and said Clerk shall thereupon accept the application for the marriage license without the production or filing of the physician's certificates and the laboratory statements dispensed with by the order or shall accept the application within any such extended period, as the case may be. The Court Clerk and employees shall hold such memorandum of the District Judge in absolute confidence.

[NCA 01-163, § 2-109, approved Sept. 7, 2001.]

#### Library References

Indians ☞ 131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

### § 2-108. Application requirements

**A. Application contents.** Persons desiring to be married in the Muscogee (Creek) Nation shall submit an application in writing signed and sworn to in person before the Court Clerk by both of the parties setting forth:

1. Each party's place of residence;
2. Each party's full name and age as the same appear upon one or more of the following documents, a copy of which shall be provided with the applica-

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tion: the party’s Muscogee (Creek) Nation Citizenship Card, a certified copy of birth certificate, a current motor vehicle operator’s, chauffeur’s or commercial license, a current voter’s registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age;

3. A statement that the parties are not disqualified from or incapable of entering into the marriage relation;

4. A statement that at least one (1) of the parties is a citizen of the Muscogee (Creek) Nation; and

5. A statement whether the parties have successfully completed a premarital counseling program.

**B. Evidence before issuance of license.** If the Court Clerk before whom application for a marriage license is made shall be in doubt of the legal capacity of the parties for whose marriage a license is sought to enter into the marriage relation, the Court Clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, the Court Clerk shall not issue a marriage license.

[NCA 01–163, § 2–110, approved Sept. 7, 2001.]

**Library References**

Indians ⇄ 131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

**§ 2–109. Issuance of license; contents; waiting period; delivery to person officiating; accompanying statement**

**A. Issuance of license.** Upon application pursuant to this section and the payment of the fee specified in subsection A of Title 6, § 2–106, if the Court Clerk is satisfied of the truth and sufficiency of the application and that there is no legal impediment to such marriage, the Court Clerk shall issue the license authorizing the marriage.

**B. Contents of license.** The license herein provided for shall contain the date of its issuance, name of the court, the full names of the persons to be married thereunder, their ages and places of residence, and social security numbers, if any and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony thereunder.

**C. Waiting period for certain licenses.** In the event that one or both of the parties are under legal age, the marriage license shall not be issued until the application has been on file in the Court Clerk’s office for a period of not less than seventy-two (72) hours, unless at the time of application for the license, the parent or guardian of such underage applicant or other person authorized

by this chapter to give consent has signed a waiver, waiving the seventy-two (72) hour waiting period.

**D. Delivery of license.** Any person obtaining such marriage license from the Court Clerk shall deliver said license, within ten (10) days from the date of issue, to the clergyman or other qualified person who is to officiate before the marriage can be performed.

**E. Accompanying statement.** Each license, when issued, shall have endorsed thereon or annexed thereto, at the end thereof, a statement, subscribed by the Court Clerk, that the application for the license was accompanied by papers complying with the applicable requirements of Title 6, § 2-107 relative to examination and health of each party, or a statement that such requirements were waived by order of the District Judge pursuant to Title 6, § 2-107. [NCA 01-163, § 2-111, approved Sept. 7, 2001.]

#### Library References

Indians ⇄ 131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

### § 2-110. Solemnization of marriages

**A. Ceremony.** All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two (2) adult, competent persons as witnesses, by a judge or retired judge of any Court of this Nation, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, and who is at least eighteen (18) years of age; by a person commissioned by the District Judge after a proper application and examination; or by the clan elder in the case of a marriage solemnized at a ceremonial ground.

**B. Prerequisites to performance of ceremony.** No person herein authorized to perform or solemnize the marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he or she has good reason to believe the persons presenting themselves before him or her for marriage are the identical persons named in the license and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

**C. Credentials to officiate at marriage ceremony.** The credentials of persons officiating at a marriage ceremony shall be confirmed as follows:

1. The preacher, minister, priest, or ecclesiastical dignitary who is a resident of this Nation shall have filed, in the office of the Court Clerk, a copy of the credentials or authority from his or her church authorizing him or her to solemnize marriages.

2. The preacher, minister, priest, or ecclesiastical dignitary who is not a resident of this Nation, but has complied with the laws of the state of which he or she is a resident, shall have filed once, in the office of the Court Clerk, a copy of his or her credentials or authority from his or her church authorizing him to solemnize marriages.

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3. The filing by resident or nonresident preachers, ministers, priests, or ecclesiastical dignitaries shall be effective in and for the Nation, provided, that no fee shall be charged for such recording.

4. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Bahai's or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church or assembly.

[NCA 01-163, § 2-112, approved Sept. 7, 2001.]

### Library References

Indians ⇄131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

## § 2-111. Endorsement and return of license

**A. Endorsement by person officiating at ceremony.** The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his or her name; official or clerical designation; the court of which he is judge or the congregation or body of which he is pastor, preacher, minister, or dignitary, provided, that the authority to perform or solemnize marriages shall be co-extensive with the congregation or body of which he is pastor, preacher, minister, priest, or dignitary; and signed by him with his or her official or clerical designation; provided further that all marriages solemnized among the society called Friends or Quakers, the spiritual assembly of the Bahai's, or the Church of Jesus Christ of Latter Day Saints, in the form heretofore practiced and in use in their meetings shall be good and valid. One person chosen by such society, church or assembly shall be responsible for completing the certification of marriage pursuant to this title in the same manner as the minister or other person authorized to perform marriages. Such person shall be chosen by the society, church or assembly for this purpose.

**B. Endorsement by witnesses.** The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and post office addresses.

**C. Return to Court Clerk.** The license with such certificate thereon shall be transmitted to the Court Clerk who issued the same within five (5) days succeeding the date of the performance of the marriage therein authorized. Any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) for each and every offense.

[NCA 01-163, § 2-113, approved Sept. 7, 2001.]

### Library References

Indians ⇄131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

**§ 2-112. Records; return; inspections**

**A. Records.** The Court Clerk issuing any marriage license shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, microfilm, microfiche, or in a book kept by the Clerk for that purpose, properly indexed. The record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license.

**B. Return of original license.** After recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

**C. Inspections.** All records pertaining to the issuance of such license shall be open to public inspection during office hours.

[NCA 01-163, § 2-114, approved Sept. 7, 2001.]

**Library References**

Indians ☞131, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 176.

**§ 2-113. Copy of record; admission as evidence**

Copies of any record required to be made and kept by the Court Clerk under the provisions of this chapter, certified to by the Court Clerk, under the Court Clerk's official signature and seal, shall be received as evidence in all Courts of this Nation.

[NCA 01-163, § 2-115, approved Sept. 7, 2001.]

## **CHAPTER 3. PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT**

### **Subchapter**

1. General Provisions
2. Special Evidentiary Rules
3. Law Enforcement Procedures and Criminal Penalties
4. Civil Procedures and Remedies
5. Offender Treatment and Victim Services

### **Cross References**

Abuse and neglect reporting requirements, see Title 6, § 1-501 et seq.

Family violence prevention, see Title 35, § 2-101.

Offenses against the person, see Title 14, § 2-301 et seq.

### **United States Code Annotated**

Indian Child Protection and Family Violence Prevention Act, see 25 U.S.C.A. § 3201 et seq.

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **Section**

- 3-101. Title.  
3-102. Purpose and construction.  
3-103. Definitions.  
3-104. Immunity.

### **§ 3-101. Title**

This chapter shall be entitled the Protection from Domestic and Family Violence Act.

[NCA 01-157, § 2-101, approved Oct. 7, 2001.]

### **§ 3-102. Purpose and construction**

This chapter shall be construed to promote the protection and safety of all victims of domestic or family violence and all victims of crimes involving domestic or family violence in a fair, prompt, and effective manner; and promote the prevention of future violence in all families.

[NCA 01-157, § 2, §§ 2-102, 105, approved Oct. 7, 2001.]

### **§ 3-103. Definitions**

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Crimes involving domestic or family violence" are as defined in Title 6, § 3-301.

B. "Cross-deputization agreement" means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any city, county or state governmental entity, by which the Lighthouse Police are authorized to act as

law enforcement officers to enforce the law of such other governmental entity with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to that entity's criminal jurisdiction as described in Title 6, § 3–302, and by which such other governmental entity's law enforcement officers are authorized to enforce the law of the Muscogee (Creek) Nation and/or federal law with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to Muscogee (Creek) Nation jurisdiction or federal jurisdiction as described in Title 6, § 3–302.

C. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement, and shall be adjudged by the District Court upon consideration of factors such as the length of time of the relationship, the type of relationship, the frequency of interaction between the parties, and if the relationship has been terminated by either parties, the length of time since the termination of the relationship. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

D. "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

1. Attempting to cause or causing physical harm to another family or household member;
2. Placing a family or household member in fear of physical harm; or
3. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

E. "Family or household members" means:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are in a dating relationship or who have been in a dating relationship as defined in subsection C of this section;
4. Adults or minors who are engaged in or who have engaged in a sexual relationship with each other;
5. Adults or minors who are related by blood or adoption;
6. Adults or minors who are related or formerly related by marriage;
7. Persons who have a child in common; and
8. Minor children of a person in a relationship that is described in paragraphs 1 and 2 of this subsection.

F. "Foreign protection order" means a protection order issued by any issuing court except the Muscogee (Creek) Nation District Court.

G. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and

## **Title 6, § 3–103**

## **DOMESTIC AND FAMILY VIOLENCE**

shall actually cause substantial distress to the person. “Harassment” shall include, but not be limited to, harassing or obscene telephone calls.

H. “Indian” means a person who is a member of the Muscogee (Creek) Nation; or a person who is a member of any other federally recognized Indian Tribe, including Native Hawaiians and Alaska Natives; or a person who possesses a Certificate of Degree of Indian Blood; or a person who under oath confirms to the District Court that he/she is an Indian.

I. “Issuing court” means a court that has issued a protection order, and includes a court of any Tribe, the United States, a state of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States.

J. “Lighthouse Police” means law enforcement officers of the Muscogee (Creek) Nation.

K. “Other authorized law enforcement officer” means, for purposes of this Act, any federal law enforcement officer or law enforcement officer of a city, county or state governmental entity who is authorized to enforce a Muscogee (Creek) Nation law or a federal law under authority of a commission received pursuant to a cross-deputization agreement as defined in subsection B of this section.

L. “Prosecutor” shall mean the Prosecutor of the Muscogee (Creek) Nation charged with the duty of enforcing the criminal laws of the Nation.

M. “Stalking” means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury.

N. “Territorial jurisdiction” means the Muscogee (Creek) Nation territorial jurisdiction as defined by the Judicial Code of the Muscogee (Creek) Nation in Title 27 of the Code of Laws of the Muscogee (Creek) Nation.

O. “Violation of protection order” means: (1) any violation within the Muscogee (Creek) Nation territorial jurisdiction of a protection order issued by the District Court; and (2) where applicable, any violation within the Muscogee (Creek) Nation territorial jurisdiction of a foreign protection order.

[NCA 01–157, § 2–103, approved Oct. 7, 2001.]

### **§ 3–104. Immunity**

No judge, Lighthouse Police or other authorized law enforcement officer, court employee, Attorney General, Assistant Attorney General, Prosecutor, Assistant Prosecutor or other Tribal government official who takes, or refrains from taking, any action to enforce a protection order can be sued in a civil suit or prosecuted in a criminal action. Nothing herein shall imply an absence of immunity for any other purpose. The Nation and all its officials, employees, and agents retain all available immunity in all settings, unless specifically and explicitly waived by law duly enacted by the National Council of the Muscogee (Creek) Nation.

[NCA 01–157, § 2–104, approved Oct. 7, 2001.]

## SUBCHAPTER 2. SPECIAL EVIDENTIARY RULES

**Section**

- 3-201. Expert testimony.  
 3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence.  
 3-203. Advocate-victim privilege.

**§ 3-201. Expert testimony**

Notwithstanding the provisions of any other evidentiary rules, in a civil or criminal action in the District Court, if a party offers evidence of a domestic abuse, the testimony of an expert witness concerning the effects of such domestic abuse on the beliefs, behavior, and perception of the person being abused shall be admissible as evidence.

[NCA 01-157, § 2-106, approved Oct. 7, 2001.]

**Library References**

Indians ☞612.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**§ 3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence**

Notwithstanding the provisions of any other evidentiary rules, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of a crime involving domestic or family violence perpetrated by the other spouse: the privilege of confidential communication between spouses and the testimonial privilege of spouses.

[NCA 01-157, § 2-107, approved Oct. 7, 2001.]

**Library References**

Indians ☞610, 612.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**§ 3-203. Advocate-victim privilege**

A. Prevention of disclosure. Except as otherwise provided in subsection B, a victim of a crime involving domestic or family violence may refuse to disclose, and may prevent an advocate as defined in subsection B of Title 6, § 3-501 from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

1. The victim; or
2. The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.

B. Mandatory reporting requirements. The privilege does not relieve a person from any duty imposed pursuant to any law of the Muscogee (Creek)

Nation concerning mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to any such law.

[NCA 01–157, § 2–108, approved Oct. 7, 2001.]

**Library References**

Indians ☞610, 612.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**SUBCHAPTER 3. LAW ENFORCEMENT PROCEDURES  
 AND CRIMINAL PENALTIES**

**Section**

- 3–301. Crimes involving domestic or family violence.
- 3–302. Criminal jurisdiction over crimes involving domestic or family violence.
- 3–303. General duties of law enforcement officers to protect victims and prevent violence.
- 3–304. Response of Lighthorse police or other authorized law enforcement officers related to complaint of domestic or family violence.
- 3–305. Arrests; rights of persons detained; reports.
- 3–306. Assistance to victims by Lighthorse police or other authorized law enforcement officer.
- 3–307. Conditions of pretrial release of person arrested for or charged with crime involving domestic or family violence.
- 3–308. Duty of Advocate or Prosecutor to notify victim.
- 3–309. Record of dismissal.
- 3–310. Rights of victims; duty of Prosecutor to inform victim of rights.
- 3–311. Residential confinement in victim’s home prohibited.
- 3–312. Diversion prohibited; deferred sentencing permitted.
- 3–313. Conditions of probation.
- 3–314. Record of reported incidents of domestic abuse; reports.
- 3–315. Giving false information to Lighthorse police or other authorized law enforcement officer.

**§ 3–301. Crimes involving domestic or family violence**

A. Crimes defined in Criminal Code. A “crime involving domestic or family violence” occurs when a family or household member commits one or more of the following crimes as defined in and punishable pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws against another family or household member:

1. Arson;
2. Assault and battery offenses;
3. Burglary, breaking and entering;
4. Destruction, damage, vandalism of property;
5. Homicide offenses, including without limitation, murder, non-negligent manslaughter, negligent manslaughter, and justifiable homicide;
6. Kidnaping and abduction;

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7. Sex offenses, forcible, including without limitation forcible rape, forcible sodomy, forcible sexual assault with an object, and forcible fondling;

8. Stolen property offenses;

9. Weapon law violations;

10. Disorderly conduct;

11. Stalking; and

12. Trespass of real property.

B. Violation of ex parte or final protection order by Indian respondent a crime.

1. In addition to the crimes listed in subsection A of this section, a “crime involving domestic or family violence” includes the violation by an Indian respondent of a protection order issued by the District Court in accordance with this Act and includes the violation by an Indian respondent of a foreign protection order as follows: An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member; an order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly; an order removing and excluding the respondent from the residence of the petitioner; an order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member; and an order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

2. Except as provided by paragraph 3 of this subsection, any Indian respondent who has been served with an ex parte or final protection order or foreign protection order and who is convicted of the crime of “Violation of a Protection Order” shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00) or by imprisonment of not less than one (1) day and not more than one (1) year, or by both such fine and imprisonment.

3. Any Indian respondent who has been served with an ex parte or final protection order or foreign protection order and who is convicted of the crime of “Violation of a Protection Order—Second or Subsequent Offense” shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000.00) or by imprisonment of not less than ten (10) days and not more than one (1) year, or both such fine and imprisonment.

4. Any Indian respondent who has been served with an ex parte or final protection order or foreign protection order who violates the protection order and causes physical injury or physical impairment to the petitioner or to any other person named in said protection order shall, upon conviction, be guilty of the crime of “Violation of Protection Order with Physical Injury Inflicted” and shall be punished by a term of imprisonment for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed five thousand dollars (\$5,000.00). In determining the term of imprisonment required by this para-

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graph, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim. The provisions of this paragraph shall not effect the applicability of Title 14 of the Muscogee (Creek) Nation Code of Laws.

5. The minimum sentence of imprisonment issued pursuant to the provisions of paragraphs 1 and 2 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the District Court may subject any remaining penalty under the jurisdiction of the District Court to the statutory provisions for suspended sentences, deferred sentences or probation.

6. In addition to any other criminal penalty specified by this section, the District Court may require the Indian respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic or family violence against the victim.

7. When an Indian minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed.

[NCA 01–157, § 2–201, approved Oct. 7, 2001.]

### **Cross References**

Crimes involving domestic or family violence, see Title 6, § 3–103.

## **§ 3–302. Criminal jurisdiction over crimes involving domestic or family violence**

**A. Muscogee (Creek) Nation jurisdiction.** The Muscogee (Creek) Nation shall have criminal jurisdiction for the enforcement of a crime involving domestic or family violence that occurs in the Muscogee (Creek) Nation territorial jurisdiction and that involves an Indian offender, regardless of the Indian or non-Indian status of the victim, subject to the limitations contained in the Federal Indian Civil Rights Act, 25 U.S.C. § 1302(7), which provides that Indian tribes shall not impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year and a fine of five thousand dollars (\$5,000), or both.

**B. Federal jurisdiction.** The Muscogee (Creek) Nation recognizes that the United States possesses criminal jurisdiction over the following:

1. The enforcement of certain felony offenses as defined by 18 U.S.C. § 1153 that are crimes involving domestic or family violence, that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by an Indian offender against an Indian victim;

2. The enforcement of certain crimes involving domestic or family violence that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by a non-Indian offender against an Indian victim;

3. The enforcement of the criminal provisions of the Federal Violence Against Women Act (VAWA), 18 U.S.C. §§ 2261 and 2262, over a person who

enters or leaves Indian country as defined by VAWA, 18 U.S.C. § 2266, with the intent to commit certain crimes involving domestic or family violence, and who in the course of or as a result of such travel, engages in such conduct as more specifically described in VAWA; and

4. Any other provisions of VAWA granting Federal Courts jurisdiction over crimes involving domestic or family violence or dating violence in Indian country as defined by VAWA, 18 U.S.C. § 2266.

**C. Construction.** Nothing herein shall be construed as limiting the authority of the Muscogee (Creek) Nation to take any of the following actions in the Muscogee (Creek) Nation territorial jurisdiction:

1. Lighthorse police enforcement of state or federal criminal laws against a non-Indian offender pursuant to a cross-deputization agreement;

2. Lighthorse arrest of a non-Indian offender, detention and referral to appropriate authorities for violation of a foreign protection order in the Muscogee (Creek) Nation territorial jurisdiction when the foreign protection order was issued against a non-Indian offender, pursuant to 18 U.S.C. § 2265; or

3. Civil enforcement related to a violation of a protection order in the Muscogee (Creek) Nation territorial jurisdiction, regardless of the Indian or non-Indian status of the offender and the victim.

[NCA 01–157, § 2–202, approved Oct. 7, 2001.]

#### **Cross References**

Cross-deputization agreements, see Title 6, § 3–103.

Jurisdiction, generally, see Title 27, § 1–102.

Protection orders, civil jurisdiction, see Title 6, § 3–401.

#### **Library References**

Indians ⇄601.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 3–303. General duties of law enforcement officers to protect victims and prevent violence**

A Lighthorse police or other authorized law enforcement officer who responds to an allegation of domestic or family violence or a crime involving domestic or family violence occurring in the Muscogee (Creek) Nation territorial jurisdiction shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking the action necessary to provide for the safety of the victim and any family or household member;

2. Confiscating any weapon involved in the domestic or family violence as provided in subsection G of Title 6, § 3–304;

3. Transporting or obtaining transportation for the victim and any child to a shelter;

4. Assisting the victim in removing essential personal effects;

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5. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;

6. Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.

[NCA 01–157, § 2–203, approved Oct. 7, 2001.]

### § 3–304. Response of Lighthouse police or other authorized law enforcement officers related to complaint of domestic or family violence

**A. Determination of identity of primary aggressor.** If a Lighthouse police or other authorized law enforcement officer receives complaints of domestic or family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

1. Prior complaint of domestic or family violence;
2. The relative severity of the injuries inflicted on each person;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense.

**B. Prohibited actions.** A Lighthouse police or other authorized law enforcement officer shall not:

1. Discourage a victim of domestic or family violence from pressing charges against the perpetrator by any means; or
2. Discourage a request for intervention by law enforcement by any party, such as threatening, suggesting, or otherwise indicating the possible arrest of all parties.

[NCA 01–157, § 2–204, approved Oct. 7, 2001.]

### § 3–305. Arrests; rights of persons detained; reports

**A. Presumption of need to arrest.** If a Lighthouse police or other authorized law enforcement officer has probable cause to believe that a person has committed a crime involving domestic or family violence, even if the crime was committed outside the presence of the officer, the Lighthouse police or other authorized law enforcement officer shall presume that arresting and charging the person is the appropriate response. A Lighthouse police or other authorized law enforcement officer shall not base the decision to arrest or not to arrest on the specific consent or request of the victim or the Officer's perception of the willingness of a victim or witness to a crime involving domestic or family violence to testify or otherwise participate in a judicial proceeding.

**B. Warrantless arrest for crimes involving domestic or family violence outside presence of law enforcement officer.** If a Lighthouse police or other authorized law enforcement officer observes a recent physical injury to, or an impairment of the physical condition of the victim, the officer shall arrest

without a warrant a person located within the Muscogee (Creek) Nation territorial jurisdiction, including his/her place of residence, if the Lighthorse police or other authorized law enforcement officer has probable cause to believe that the person, within the preceding seventy-two (72) hours, has committed a crime involving domestic or family violence in the Muscogee (Creek) Nation territorial jurisdiction, although the crime did not take place in the presence of the Lighthorse police or other authorized law enforcement officer.

**C. Warrantless arrest for violation of protection order issued by District Court.** A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that:

1. An emergency ex parte or final protection order has been issued and served upon the person, pursuant to this title;
2. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
3. The person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**D. Mandatory warrantless arrest for violation of conditions of pretrial release.** If a Lighthorse officer or other authorized law enforcement officer has probable cause to believe that a person has violated a condition of pretrial release imposed in accordance with Title 6, § 3-307 in the Muscogee (Creek) Nation territorial jurisdiction and verifies that the alleged violator has notice of the condition, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**E. Warrantless arrest for violation of foreign protection orders.** A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the following conditions have been met:

1. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that a foreign protection order has been issued pursuant to the law of the issuing court; and
2. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**F. Seizure of weapons incident to arrest.** Incident to an arrest for a crime involving domestic or family violence, a Lighthorse police or other authorized law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime; and

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2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

**G. Rights of person detained.** Any person detained pursuant to this section shall be brought before the District Court within twenty-four (24) hours after arrest to answer to a charge for violation of the order, at which time the District Court shall do each of the following:

1. Set a time certain for a hearing on the violation of the order within seventy-two (72) hours after arrest, unless extended by the District Court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the violation of the order; and

3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

**H. Written report stating grounds for action.** In addition to any other report required, a Lighthorse police or other authorized law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence shall submit a written report setting forth the grounds for not arresting or for arresting both parties.

[NCA 01–157, § 2–205, approved Oct. 7, 2001.]

### Cross References

Criminal procedure, arrest, see Title 14, § 1–307.

### Library References

Arrest ⇨62.

Westlaw Topic No. 35.

C.J.S. Arrest §§ 9 to 10.

## § 3–306. Assistance to victims by Lighthorse police or other authorized law enforcement officer

**A. Notice to victim.** The Lighthorse police or other authorized law enforcement officer shall give the victim immediate, adequate oral and written notice of the rights of victims and of the remedies and services available to victims of domestic or family violence. The written notice shall include resources available in the Community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters. The written notice shall not include the addresses of shelters, unless the location is public knowledge and shall be provided in the native language of the victim, if practicable, when the native language of the victim is not English. The written notice shall be substantially in the following form:

“If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a

safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may assist law enforcement in the completion of a police report of the incident and receive a copy of the police report at no cost to you. You also have the right to file a petition in the Muscogee (Creek) Nation District Court requesting an order for protection from domestic or family violence which could include any of the following orders:

“1. An order enjoining your abuser from threatening to commit or committing acts of domestic or family violence against you or other family or household member;

“2. An order prohibiting your abuser from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;

“3. An order removing and excluding your abuser from the residence of the petitioner;

“4. An order requiring your abuser to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

“5. An order prohibiting your abuser from using or possessing a firearm or other weapon specified by the Court;

“6. An order requiring your abuser to pay attorneys fees and court costs; and

“7. An order requiring your abuser to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

“The forms you need to obtain an order for protection are available from the Muscogee (Creek) Nation District Court Clerk. The resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters are [Note: the list and hotline numbers shall be inserted by the District Court Clerk during preparation of this Notice for use by Lighthorse police].”

**B. Responsibility of law enforcement officers related to emergency protection order after arrest**

1. When an arrest has been made pursuant to Title 6, § 3-305 and the District Court is not open for business, the Lighthorse police or other authorized law enforcement officer shall either (1) seek an emergency temporary order on behalf of the victim or (2) provide the victim with a form for a petition for an emergency temporary protection order and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Title 6, § 3-403 for a petition for protection order.

2. The Lighthorse police officer or other authorized law enforcement officer shall immediately notify, by telephone or otherwise, the Judge of the District Court of the request for an emergency temporary protection order and describe the circumstances. The District Court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the Court

in person or by telephone, and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence based on an allegation of a recent incident of domestic or family violence by a family or household member. The order may include any of the types of relief set forth in paragraphs 1 through 5 of subsection A of this section. The Judge shall inform the Lighthorse police or other authorized law enforcement officer of his decision to approve or disapprove the emergency temporary order. If the order is approved, the law enforcement officer shall write and sign the order on the form required pursuant to Title 6, §§ 3–404 and 6–3–405.

3. The law enforcement officer shall inform the victim whether the Judge has approved or disapproved an emergency temporary order. If an emergency order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the Judge has approved the emergency temporary protection order and notify said victim that the emergency temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.

4. The law enforcement officer shall notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the Lighthorse police or other authorized law enforcement officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to said person. The law enforcement officer shall file a copy of the petition and the statement of the Lighthorse police or other authorized law enforcement officer with the District Court immediately upon the opening of the District Court on the next business day. The temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.

[NCA 01–157, § 2–206, approved Oct. 7, 2001.]

#### **Cross References**

Eligible petitioners for civil protection order, see Title 6, § 3–402.

### **§ 3–307. Conditions of pretrial release of person arrested for or charged with crime involving domestic or family violence**

**A. Review of facts.** In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the District Court shall review the facts of the arrest and detention of the person and determine whether the person:

1. Is a threat to the victim or other family or household member;
2. Is a threat to public safety; and
3. Is reasonably likely to appear in court.

**B. Findings.** Before releasing a person arrested for or charged with a crime involving domestic or family violence, the District Court shall make findings on the record if possible concerning the determination made in accordance with subsection A and may impose conditions of release or bail on the person to protect the victim of domestic or family violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

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1. An order enjoining the person from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;

2. An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;

3. An order directing the person to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be;

4. An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;

5. An order prohibiting the person from possession or consumption of alcohol or controlled substances; and

6. Any other order required to protect the safety of the victim and to ensure the appearance of the person in court.

**C. Conditional release.** If conditions of release are imposed, the District Court shall:

1. Issue a written order for conditional release;

2. Immediately distribute a copy of the order to the agency having custody of the arrested or charged person; and

3. Provide the agency having custody of the arrested or charged person with any available information concerning the location of the victim in a manner that protects the safety of the victim.

**D. Provision of copy of conditions to person charged.** The District Court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

**E. Hearing upon request.** If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

**F. Notification of victim.** When a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection is released from custody, the District Court shall:

1. Use all reasonable means to immediately notify the victim of the crime of the release; and

2. Furnish the victim of the crime at no cost a certified copy of any conditions of release.

**G. No delay.** Release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection shall not be delayed because of the requirements of subsection F of this section.

[NCA 01-157, § 2-207, approved Oct. 7, 2001.]

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### Cross References

Bail and bonds, criminal procedure, see Title 14, § 1–801 et seq.

### Library References

Bail ⇔41.

Indians ⇔604.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail;release and Detention Pending  
§§ 7 to 8, 11 to 60.

C.J.S. Indians §§ 151 to 179.

### § 3–308. Duty of Advocate or Prosecutor to notify victim

**A. Notification of victim.** The Advocate or Prosecutor shall make reasonable efforts to notify a victim of a crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

**B. No delay.** Release of a defendant from custody shall not be delayed because of the requirements of subsection A of this section.

[NCA 01–157, § 2–208, approved Oct. 7, 2001.]

### § 3–309. Record of dismissal

When the District Court dismisses criminal charges or the Prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal shall be recorded in the court file. The Prosecutor shall indicate the specific reason why the witness is unavailable and the reasons the case cannot be prosecuted.

[NCA 01–157, § 2–209, approved Oct. 7, 2001.]

### § 3–310. Rights of victims; duty of Prosecutor to inform victim of rights

**A. Rights of victims.** A victim of a crime involving domestic and family violence is entitled to all rights granted to victims of crime including but not limited to the right to:

1. Be informed of all hearing dates and continuances.
2. Be present at sentencing and address the Court.
3. Be advised by the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members; and
4. Receive restitution for losses sustained as a direct consequence of any criminal conduct.

**B. Duty of Prosecutor to inform victim of rights.** An attorney prosecuting a crime involving domestic or family violence shall notify the victim of domestic or family violence of the victim's rights set forth in this section.

[NCA 01–157, § 2–210, approved Oct. 7, 2001.]

### § 3–311. Residential confinement in victim's home prohibited

In criminal cases involving domestic or family violence, the District Court shall not order residential confinement for a perpetrator in the home of the victim.

[NCA 01–157, § 2–211, approved Oct. 7, 2001.]

**Cross References**

Sentence, criminal procedure, see Title 14, § 1-604.

**§ 3-312. Diversion prohibited; deferred sentencing permitted**

**A. Diversion prohibited.** The District Court shall not approve diversion for a perpetrator of a crime involving domestic or family violence.

**B. Deferred sentence.** The Court may defer sentencing of a perpetrator of a crime involving domestic or family violence if:

1. The perpetrator meets eligibility criteria established pursuant to subsection C of this section;
2. Consent of the Prosecutor is obtained after consultation with the victim, when the victim is available;
3. A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
4. The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

**C. Criteria.** District Court shall establish criteria for determination of:

1. A perpetrator's eligibility for deferred sentencing;
2. A perpetrator's successful completion of the conditions imposed by the Court; and
3. Penalties for violation of the conditions imposed by the Court.

**D. Dismissal.** The case against a perpetrator of a crime involving domestic or family violence may be dismissed if the perpetrator successfully completes all conditions imposed by the Court pursuant to subsection B of this section.

[NCA 01-157, § 2-212, approved Oct. 7, 2001.]

**Cross References**

Sentence, criminal procedure, see Title 14, § 1-604 et seq.

**Library References**

Indians ⇄620.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-313. Conditions of probation**

**A. Considerations.** Before placing a perpetrator who is convicted of a crime involving domestic or family violence on probation, the Court shall consider the safety and protection of the victim of a crime involving domestic or family violence and any member of the victim's family or household.

**B. Conditions.** The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:

1. Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;

2. Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
3. Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member;
4. Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
5. Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
6. Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
7. Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators established pursuant to Title 6, § 3–502, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
8. Directing the perpetrator to pay restitution to the victim; and
9. Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or to rehabilitate the perpetrator.

**C. Costs.** The perpetrator shall pay the costs of any condition of probation, according to ability.

**D. Probation Officer policies and procedures.** The Probation Officer shall establish policies and procedures for the exchange of information concerning the perpetrator with the Court and the victim; and for responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection B of this section.

**E. Immediate report required.** The probation department shall immediately report to the Court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

[NCA 01–157, § 2–213, approved Oct. 7, 2001.]

#### Cross References

Sentence, criminal procedure, see Title 14, § 1–604.

#### Library References

Indians ⇨625.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3–314. Record of reported incidents of domestic abuse; reports

**A. Duty to maintain records.** It shall be the duty of the Lighthouse Police Administration to keep a record of each reported incident of domestic and family violence as provided in subsection B of this section and to submit a monthly report to such incidents as provided in subsection C of this section.

**B. Contents of records.** The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred; and
3. Show the time of day the incident occurred.

**C. Monthly report.** A monthly report of the recorded incidents of domestic abuse, as well as reports required by subsection D of Title 6, § 1-206, shall be submitted to the Lighthorse Commission and the Office of the Attorney General.

[NCA 01-157, § 2-214, approved Oct. 7, 2001.]

**§ 3-315. Giving false information to Lighthorse police or other authorized law enforcement officer**

It shall be a crime to knowingly and willfully present any false or materially altered protection order to any Lighthorse police or other authorized law enforcement officer to effect an arrest of any person. Such crime shall be punishable by a term of imprisonment of no more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

[NCA 01-157, § 2-215, approved Oct. 7, 2001.]

**SUBCHAPTER 4. CIVIL PROCEDURES AND REMEDIES**

**Section**

- 3-401. Civil jurisdiction.
- 3-402. Eligible petitioners for civil protection order.
- 3-403. Petition for protection order.
- 3-404. Protection order; statement required; validity.
- 3-405. Emergency ex parte protection order.
- 3-406. Service of process.
- 3-407. Hearing and issuance of order.
- 3-408. Access to protection orders by law enforcement agencies.
- 3-409. Other proceedings; delay of relief prohibited; omission of petitioner's address.
- 3-410. Effect of action by petitioner or respondent on order.
- 3-411. Denial of relief due to lapse of time prohibited.
- 3-412. Mutual orders for protection prohibited.
- 3-413. Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited.
- 3-414. Violation of ex parte or final protection order; civil penalty.
- 3-415. Registration and enforcement of foreign orders for protection; duties of Court Clerk.
- 3-416. Judicial enforcement of foreign protection orders.
- 3-417. Role of law enforcement in foreign protection orders.
- 3-418. Violation of foreign protection order.

**§ 3-401. Civil jurisdiction**

The District Court has full civil jurisdiction to issue protection orders if the petitioner currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction, if the respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction or if the domestic or family violence occurred in the Muscogee (Creek) Nation territorial jurisdiction; provided that such civil jurisdiction may be exercised regardless of the Indian

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or non-Indian status of petitioners and respondents. There is no minimum requirement of residency to petition the District Court for an order for protection. In accordance with 18 U.S.C. § 2265(e), the District Court has full civil jurisdiction to enforce protection orders issued by the District Court and to enforce foreign protection orders pursuant to Title 6, §§ 3–415, 3–416 and 6–3–417.

[NCA 01–157, § 3–101, approved Oct. 7, 2001.]

### Cross References

Criminal jurisdiction over crimes involving domestic or family violence, see Title 6, § 3–302.  
Jurisdiction, generally, see Title 27, § 1–102.

### Library References

Indians ⇨501, 534.	C.J.S. Domestic Abuse and Violence §§ 11, 15 to 16, 18.
Protection of Endangered Persons ⇨33.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 209, 315P.	
C.J.S. Breach of the Peace §§ 18, 22.	

## § 3–402. Eligible petitioners for civil protection order

**A. Petition by victim.** A victim of domestic or family violence as defined in subsection D of Title 6, § 3–103 may seek relief by filing a civil petition for protection order with the District Court.

**B. Petition on behalf of child.** A parent, guardian, or other representative may file a civil petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.

**C. Request for emergency temporary order.** When the domestic or family violence occurs when the District Court is not open for business, such person may request an emergency temporary protection order as provided by Title 6, §§ 3–306 and 3–405. The District Judge or other Court officer with authority to issue an order for protection shall be available twenty-four (24) hours a day to hear petitions for emergency orders for protection.

[NCA 01–157, § 3–102, approved Oct. 7, 2001.]

### Library References

Protection of Endangered Persons ⇨45.	C.J.S. Domestic Abuse and Violence §§ 1, 5, 7 to 10, 15 to 16, 18.
Westlaw Topic No. 315P.	
C.J.S. Breach of the Peace §§ 18, 20, 32 to 35.	

## § 3–403. Petition for protection order

**A. Form of petition.** The petition forms shall be provided by the Clerk of the District Court and shall be in substantially the following form:



4. (Answer this question only if the petitioner is filing on behalf of someone else, minor or incompetent)

The petitioner and the victim are related as follows:

- parent and child
- persons related by blood
- next friend and incompetent
- guardian and ward

5. (Check A or B)

A)  The victim is in immediate and present danger of abuse from the respondent and an emergency ex parte order is necessary to protect the victim from serious harm. The petitioner requests the following relief in the emergency ex parte order:

(Check one or more)

order the respondent not to commit or threaten to commit any acts of domestic or family violence against the victim or other family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

order the respondent to stay away [from the residence of the victim located at \_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to stay away from the school, place of employment or other places frequented regularly by the victim and any named family or household member specified as follows: \_\_\_\_\_

on or before \_\_\_\_\_

order the respondent not to use or possess a firearm or other weapon specified by the Court.

\_\_\_\_\_ (describe other relief that petitioner requests)

B)  The petitioner does not request an emergency ex parte order.

6. Petitioner requests the following order to be made by the District Court following notice to the respondent and a hearing:

(Check one or more)

order the respondent not to commit or threaten to commit any acts of domestic or family violence against the victim or other family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

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order the respondent to stay away from the residence of the victim located at \_\_\_\_\_ on or before \_\_\_\_\_

order the respondent to stay away from the school, place of employment or other places frequented regularly by the victim and any named family or household member specified as follows: \_\_\_\_\_

on or before \_\_\_\_\_

order the respondent not to use or possess a firearm or other weapon specified by the Court.

order the respondent to pay restitution as follows:

Medical expenses arising from injuries caused by the respondent

Reimbursement for property damaged by the respondent

Expenses for shelter for the victim

order the respondent to pay attorney fees of the petitioner in the sum of \$\_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to pay court costs of this action in the sum of \$\_\_\_\_\_ on or before \_\_\_\_\_.

\_\_\_\_\_ (describe other relief that petitioner requests)

7.  Victim is a resident of the Muscogee (Creek) Nation as defined by the Constitution of the Muscogee (Creek) Nation wherein this petition is filed.

This Court has jurisdiction to hear this petition because:

(Check one)

Petitioner currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

Respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

Respondent committed an act or acts of domestic or family violence in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

8. Petitioner, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to the truth, and nothing but the truth.

\_\_\_\_\_  
Petitioner

Witness may hand and seal, affixed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
District Court Clerk,  
Deputy District Court Clerk or Notary Public

**B. Costs and fees.** The victim shall not be required to pay filing or service costs related to a protection order. The District Court may assess court costs and filing fees against the abuser at the hearing on the petition.

[NCA 01-157, § 3-103, approved Oct. 7, 2001.]

**Cross References**

Emergency temporary protection order, see Title 6, § 3-306.

**§ 3-404. Protection order; statement required; validity**

In addition to any other provisions required by this chapter, or otherwise required by law, each ex parte or final protection order issued pursuant to this chapter shall have the following statement printed in bold-faced type or in capital letters:

“THE FILING OR NONFILING OF CRIMINAL CHARGES RELATING TO THIS MATTER AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE AT THE DISCRETION OF THE MUSCOGEE (CREEK) NATION PROSECUTOR. NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER. THIS ORDER SHALL BE IN EFFECT FOR THREE (3) YEARS UNLESS RENEWED, MODIFIED, VACATED OR RESCINDED BY THE COURT. A VIOLATOR OF THIS ORDER MAY BE PUNISHED BY CIVIL CONTEMPT OF COURT BY FINE OF UP TO \$5,000. A VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2500 FOR A FIRST OFFENSE AND UP TO FIVE THOUSAND DOLLARS (\$5000.00) FOR A SECOND OR SUBSEQUENT OFFENSE OR IMPRISONMENT OF UP TO ONE (1) YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. A VIOLATION OF THIS ORDER WHICH CAUSES INJURY IS A CRIME PUNISHABLE BY IMPRISONMENT FOR TWENTY (20) DAYS TO ONE (1) YEAR OR A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT. POSSESSION OF A FIREARM OR AMMUNITION BY A RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY SUBJECT THE RESPONDENT TO PROSECUTION FOR VIOLATION OF FEDERAL LAW EVEN IF THIS ORDER DOES NOT SPECIFICALLY PROHIBIT THE RESPONDENT FROM POSSESSING A FIREARM OR AMMUNITION.”

“A KNOWING VIOLATION OF A PROTECTION ORDER IS A CRIME IN THE JURISDICTION OF THE MUSCOGEE (CREEK) NATION, IN THE STATE OF OKLAHOMA AND IN OTHER JURISDICTIONS. ANY PERSON WHO TRAVELS ACROSS STATE LINES OR ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO VIOLATE A PROTECTION ORDER AND WHO SUBSEQUENTLY ENGAGES IN SUCH CONDUCT IS SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C. § 2262. ANY PERSON WHO ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO KILL, INJURE, HARASS, OR INTIMIDATE A SPOUSE OR INTIMATE PARTNER, AND WHO, IN THE COURSE OF OR AS A RESULT OF SUCH TRAVEL, COMMITS OR ATTEMPTS TO COMMIT A CRIME OF VIOLENCE AGAINST THAT SPOUSE OR INTIMATE

PARTNER, SHALL BE SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C. § 2261.”

“FEDERAL LAW REQUIRES THAT THIS ORDER BE GIVEN FULL FAITH AND CREDIT BY THE COURT OF ANY OTHER STATE OR INDIAN TRIBE UNDER 18 U.S.C. § 2265.”

[NCA 01–157, § 3–104, approved Oct. 7, 2001.]

#### Cross References

Emergency temporary protection order, see Title 6, § 3–306.

### § 3–405. Emergency ex parte protection order

**A. Hearing on request for emergency ex parte protection order.** If a petitioner requests an emergency ex parte protection order pursuant to this section, the District Court shall hold an ex parte hearing on the same day the petition is filed. The District Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic and family violence, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted; provided, if the respondent, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the respondent is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the respondent with the permanent order. Any emergency ex parte order entered shall state: “IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU.”

**B. Contents of emergency ex parte order.** An emergency ex parte order authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
6. An order requiring the respondent to pay attorneys fees and court costs; and
7. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

**C. Verbal or written order.** If a petitioner requests an emergency temporary ex parte protection order as provided by subsection B of Title 6, § 3–306, the judge who is notified of the request by a Lighthorse police or other authorized law enforcement officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the Lighthorse police or other authorized law enforcement officer to complete and sign a statement attesting to the order.

**D. Effective period.** The emergency temporary ex parte order shall be in effect no more than ten (10) days from the date it was issued by the District Court.

[NCA 01–157, § 3–105, approved Oct. 7, 2001.]

#### Library References

Indians ⇄519.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3–406. Service of process

A copy of the petition, notice of hearing and a copy of any ex parte order issued by the District Court shall be served upon the respondent in the same manner as a summons. The Lighthorse police shall attempt service within twenty-four (24) hours of the issuance of an ex parte order by the District Court; provided that a private process server who is licensed pursuant to law of the Muscogee (Creek) Nation may serve such documents in the event that jurisdictional or practical considerations prevent service by the Lighthorse police and provided further that a private process server who is licensed pursuant to Oklahoma law or a law enforcement officer from another jurisdiction may serve such documents outside of Muscogee (Creek) Nation territorial jurisdiction. Ex parte orders can be served twenty-four (24) hours a day.

[NCA 01–157, § 3–106, approved Oct. 7, 2001.]

#### Library References

Indians ⇄510.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3–407. Hearing and issuance of order

**A. Hearing.** Upon filing of a petition for protection order, the District Court shall schedule a full hearing on the petition, said hearing to be held no sooner than three (3) days and no later than ten (10) days from the date of filing of the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

**B. Issuance of protection order.** At the hearing for a protection order, the District Court may grant any protection order to bring about the cessation of domestic or family violence against the victim or stalking or harassment of the victim.

**C. Contents of protection order.** Protection orders authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
6. An order requiring the respondent to pay attorneys fees and court costs; and
7. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

**D. Treatment.** After notice and hearing, protection orders authorized by this section may require the petitioner, the respondent or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic or family violence against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The District Court shall not be responsible for such cost.

**E. Service of protection order.** When necessary to protect the victim and when authorized by the District Court, protection orders granted pursuant to the provisions of this section may be served upon the respondent by a Light-horse officer or other authorized law enforcement officer whose duty it is to preserve the peace.

**F. Time limitations.** Any protection order issued pursuant to this section shall be for a fixed period not to exceed a period of three (3) years unless extended by the District Court. The District Court shall notify the parties at the time of the issuance of the protection order of the duration of the protection order.

1. The District Court Clerk shall send notice of expiration to the parties sixty (60) days prior to the expiration of a protection order.
2. The petitioning party shall have the opportunity to apply for renewal of the protection order for an additional three (3) year period.
3. Upon application, the District Court Clerk shall notify each party of the court date of the hearing on the application. It shall be the duty of each party to keep the District Court clerk informed of his or her current address.

4. At the hearing for renewal of the protection order, the District Court may grant the renewal of the protection order or allow the protection order to expire.

**G. Limited scope of protection order.** No order issued under this chapter shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief otherwise obtainable under the laws of the Muscogee (Creek) Nation. [NCA 01–157, § 3–107, approved Oct. 7, 2001.]

#### Library References

Indians ⇨519, 534.	C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.
Protection of Endangered Persons ⇨70, 72.	
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.	

### § 3–408. Access to protection orders by law enforcement agencies

**A. District Court responsibility to distribute protection orders.** Within twenty-four (24) hours of the return of service of any ex parte or final protection order, the District Court Clerk shall send certified copies thereof to Lighthorse as well as to all appropriate law enforcement agencies designated by the petitioner. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protection order shall be sent by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section.

**B. Lighthorse police responsibility to ensure access to protection orders.** The Lighthorse police 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.

[NCA 01–157, § 3–108, approved Oct. 7, 2001.]

### § 3–409. Other proceedings; delay of relief prohibited; omission of petitioner’s address

**A. Duty to inform court.** At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of each proceeding for an order for protection, any civil litigation, each proceeding in family or Juvenile Court, and each criminal case involving the parties, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

**B. Other actions.** An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A Court shall not delay granting relief because of the existence of a pending action between the parties.

**C. Address of petitioner.** A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner shall provide the Court a mailing address. If disclosure of petitioner’s

address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

1. After receiving the petitioner's consent;
2. Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or
3. After a hearing, if the Court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

[NCA 01-157, § 3-109, approved Oct. 7, 2001.]

**§ 3-410. Effect of action by petitioner or respondent on order**

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

[NCA 01-157, § 3-110, approved Oct. 7, 2001.]

**§ 3-411. Denial of relief due to lapse of time prohibited**

The Court shall not deny a petitioner relief requested pursuant to this subchapter solely because of a lapse of time between an act of domestic or family violence and the filing of the petition.

[NCA 01-157, § 3-111, approved Oct. 7, 2001.]

**§ 3-412. Mutual orders for protection prohibited**

A court shall not grant a mutual order for protection to opposing parties.

[NCA 01-157, § 3-112, approved Oct. 7, 2001.]

**§ 3-413. Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited**

A court shall not order parties into mediation or joint counseling or refer them to mediation or joint counseling for resolution of the issues in a petition for an order for protection.

[NCA 01-157, § 3-113, approved Oct. 7, 2001.]

**§ 3-414. Violation of ex parte or final protection order; civil penalty**

**A. Violation of order; contempt of court.** Except as provided in subsection B of this section, any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such person is in contempt of court, shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00).

**B. Violation of order; subsequent offenses.** Any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order after a prior judicial finding of contempt of court for a previous violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such

person is in contempt of court for a second or subsequent offense, shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000.00); and

**C. Treatment.** In addition to any other civil penalty specified by this section, the District Court may require the respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic or family violence against the victim.

**D. Violation of order by minor.** When a minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed.

[NCA 01-157, § 3-114, approved Oct. 7, 2001.]

#### Library References

Indians ☞539.	C.J.S. Breach of the Peace §§ 18 to 19, 23, 28
Protection of Endangered Persons ☞96.	to 38.
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.

### § 3-415. Registration and enforcement of foreign orders for protection; duties of Court Clerk

**A. Registration.** A certified copy of a foreign protection order issued by another Tribal court or by a state court may be filed in the office of the District Court Clerk. The District Court Clerk shall act upon the order in the same manner as the clerk acts upon an order for protection issued by the District Court. The District Court Clerk shall not notify the perpetrator of the registration of an out of state or Tribal protection order, unless the victim requests the notification.

**B. Effect of foreign order.** An order for protection filed in accordance with subsection A of this section has the same effect and shall be enforced in the same manner as an order for protection issued by the District Court.

**C. Court Clerk responsibilities.** The District Court Clerk shall:

1. Maintain a registry in which to enter certified orders for protection issued by other Tribal courts or by state courts that are received for filing.
2. At the request of a court of another Indian Tribe or of a state or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

**D. Enforcement.** The District Court shall enforce all provisions of a registered foreign order for protection.

[NCA 01-157, § 3-115, approved Oct. 7, 2001.]

#### Library References

Indians ☞531.	C.J.S. Breach of the Peace §§ 18, 24 to 28, 32
Protection of Endangered Persons ☞110.	to 38.
Westlaw Topic Nos. 209, 315P.	

C.J.S. Domestic Abuse and Violence §§ 2, 4,  
11 to 14, 16 to 17, 19 to 34, 36 to 45.  
C.J.S. Indians §§ 151 to 179.

### § 3-416. Judicial enforcement of foreign protection orders

**A. Full faith and credit.** Pursuant to 18 U.S.C. § 2265, any protection order issued that is valid according to the standards contained in subsection B of this section by the court of a state or another Indian Tribe shall be accorded full faith and credit by the District Court and the District Court shall enforce a valid foreign protection order as if it were issued by the District Court.

**B. Requirements for valid orders.** A protection order issued by a state or another Tribal court shall be valid if:

1. The issuing Court had jurisdiction over the parties and matter under the law of such state or Indian Tribe; and
2. Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of an ex parte order, notice and opportunity to be heard must have been provided within the time required by state or Tribal law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

**C. Registration not required.** Registration or filing of a foreign protection order shall not be a prerequisite for District Court enforcement of out-of-state or Tribal orders or protection.

**D. Initiation of proceeding for enforcement.** A proceeding to enforce a foreign protection order may be started in the District Court by:

1. A motion filed by the petitioner holding the foreign protection order, alleging that respondent has violated the protection order and requesting that the District Court enforce the order; and/or
2. An action filed by the Prosecutor alleging that respondent has violated the foreign protection order.

**E. Validity of order; affirmative defense.** If a foreign protection order bears the name of an issuing court, the persons to whom it applies, a judge's signature or an equivalent sign, terms and conditions against the respondent, and does not bear an expiration date that has passed or any other obvious indication that it is not authentic, it will be deemed valid, and the District Court shall enforce it, unless the party against whom the order is to be enforced proves, as an affirmative defense, that:

1. The issuing court did not have jurisdiction over the parties or the dispute under the law of the issuing court;
2. The respondent was not given due process, which means reasonable notice and an opportunity to be heard. If the foreign protection order was originally entered without the respondent having an opportunity to be heard, the respondent shall have been given notice and an opportunity to be heard within the time required by the law of the issuing court, or in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights;

3. The protection order is a support or child custody order issued pursuant to state divorce and child custody laws that is not entitled to full faith and credit under other federal law.

**F. Cross or counter petitions.** Cross or counter petitions are not entitled to full faith and credit unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

[NCA 01–157, § 3–116, approved Oct. 7, 2001.]

#### Library References

Courts ☞530.	C.J.S. Domestic Abuse and Violence §§ 2, 4,
Protection of Endangered Persons ☞110.	11 to 14, 16 to 17, 19 to 34, 36 to 45.
Westlaw Topic Nos. 106, 315P.	
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32	
to 38.	

### § 3–417. Role of law enforcement in foreign protection orders

**A. Manner of enforcement.** A Lighthouse police or other authorized law enforcement officer shall enforce a foreign protection order in the same manner as he or she would enforce a protection order issued by the District Court.

**B. Reliance on copy of order or statement of person.** A Lighthouse police or other authorized law enforcement officer may rely on a copy of a foreign protection order that is provided to the officer from any source. A Lighthouse police or other authorized law enforcement officer may rely on the statement of a person protected by a foreign protection order that the order remains in effect.

**C. Authenticity of order.** If a copy of a foreign protection order is provided to the officer from any source, the officer shall enforce the order if it appears to the officer to be authentic. An officer shall treat a foreign protection order as authentic if it:

1. Bears the names of the issuing court and the persons to whom it applies, terms and conditions against the respondent, and a judge's signature or an equivalent sign; and
2. Does not bear an expiration date that has passed or any other obvious indication that it is not authentic.

**D. Verification of authenticity.** The fact that the foreign protection order cannot be verified in the manner described in the following paragraph does not mean that the order is not authentic.

**E. Verification of information.** If a person claiming to be protected by a foreign protection order does not have a copy of the order, the Lighthouse police or other authorized law enforcement officer shall attempt to verify the existence of the order, the names of the issuing court and the persons to whom it applies, the terms and conditions against the respondent, and that the order does not bear an expiration date that has passed or any other obvious indication that it is not authentic. If the Lighthouse police or other authorized law enforcement officer verifies this information, the officer shall enforce the

foreign protection order. Examples of ways to verify the order include consulting the issuing court, the Law Enforcement Information Network (LEIN), the National Crime Information Center (NCIC), a registry operated by the issuing jurisdiction, or any similarly reliable source.

**F. Maintenance of peace.** If a person claiming to be protected by a foreign protection order does not have a copy of the order and the Lighthorse police or other authorized law enforcement officer cannot verify the existence of the order through reliable sources, the officer shall maintain the peace and take any other lawful action that appears appropriate to the officer.

**G. Counter or cross petitions.** Cross or counter petitions shall not be enforced unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

[NCA 01-157, § 3-117, approved Oct. 7, 2001.]

#### Library References

Indians ☞539.	C.J.S. Breach of the Peace §§ 18 to 19, 23, 28
Protection of Endangered Persons ☞90.	to 38.
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.

### § 3-418. Violation of foreign protection order

When, following a hearing, the District Court finds that a person has violated a foreign protection order within the Muscogee (Creek) Nation territorial jurisdiction, the District Court may impose any penalty provided by law for violating a protection order issued by the District Court. The determination whether a foreign protection order has been violated is made in accordance with the Muscogee (Creek) Nation procedures governing criminal and civil cases.

[NCA 01-157, § 3-118, approved Oct. 7, 2001.]

## SUBCHAPTER 5. OFFENDER TREATMENT AND VICTIM SERVICES

### Section

- 3-501. Programs for victims of domestic violence.
- 3-502. Program of intervention for perpetrators.
- 3-503. Confidentiality of records.

### § 3-501. Programs for victims of domestic violence

**A. “Program for victims of domestic violence” defined.** A “program for victims of domestic or family violence” is a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education, or training.

**B. “Advocate” defined.** An “advocate” means an employee of or volunteer for a program for victims of domestic or family violence and victims of crimes involving domestic violence who:

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1. Has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence and victims of crimes involving domestic violence; supervising the employees or volunteers of the program; or administering the program;
2. Has undergone sufficient hours of training to perform the functions of an advocate; and
3. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

**C. Memorandum of understanding to secure program for victims of domestic violence.** The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief may enter into a memorandum of agreement with a private agency or organization that has a record of service to victims of domestic or family violence to provide a program for victims of domestic or family violence. The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief shall coordinate the provision of services with the providers of programs for victims of domestic or family violence.

**D. Duties of provider of program for domestic and family violence.** The duties of the provider of the program for domestic and family violence shall include but are not limited to:

1. Informing victims of domestic or family violence of their rights pursuant to applicable Tribal, state and federal law concerning victims' rights and assisting victims in securing those rights;
2. Informing victims of the availability of orders for protection and assisting victims in obtaining such orders;
3. Coordination with hospitals and the program for victims of domestic or family violence;
4. Providing interpreters for cases involving domestic or family violence, including requests for orders for protection;
5. Informing victims of the availability of shelter, counseling, and other social services;
6. Providing victims with shelter, counseling and other social services; and
7. Providing a victim with a safety plan consisting of a written or oral outline of actions to be taken by the victim to secure protection and support after making an assessment of the dangerousness of the situation, and assisting the victim in preparing the plan.

[NCA 01–157, § 4–101, approved Oct. 7, 2001.]

### Cross References

Advocate-victim privilege, special evidentiary rules, see Title 6, § 3–203.

## § 3–502. Program of intervention for perpetrators

**A. “Program of intervention for perpetrators” defined.** “Program of intervention for perpetrators” means a specialized program that accepts perpetra-

tors of domestic or family violence into treatment or educational classes to satisfy court orders; offers treatment to perpetrators of domestic or family violence; or offers classes or instruction to perpetrators of domestic or family violence.

**B. Establishment of program.** The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief may enter into a memorandum of agreement with the Behavioral Health Department of the Muscogee (Creek) Nation Health Services Administration related to the establishment and availability of a program of education and counseling for domestic or family violence offenders and a program of intervention for perpetrators convicted of crimes involving domestic or family violence. The focus of the program shall be stopping the acts of violence and ensuring the safety of the victim and any children or other family or household members. The program shall be based on recognition that violence is a behavior for which the perpetrator shall be held accountable and recognition that substance abuse is a problem separate from domestic or family violence which requires specialized treatment.

**C. Development of policies and procedures.** The Muscogee (Creek) Nation Department of Justice and the Behavioral Health Department of the Muscogee (Creek) Nation Health Services Administration shall develop policies and procedures describing:

1. Standards of treatment for programs of intervention;
2. Criteria concerning a perpetrator's appropriateness for the program;
3. Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic or family violence, and the programs of intervention for perpetrators; and
4. Required education and qualifications of providers of intervention.

**D. Requirements.** Providers of programs of intervention for perpetrators shall require a perpetrator who is ordered into the program by a court to sign a release allowing the provider to inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and to provide information for safety of the victim and victim's advocates; to sign a release allowing prior and current treating agencies to provide information about the perpetrator to the provider; and to sign a release allowing the provider to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation of officers. and children's protection services. Providers of programs of intervention for perpetrators shall report to the court and the victim any assault, failure to comply with the program, failure to attend the program, and threat of harm by the perpetrator.

[NCA 01-157, § 4-102, approved Oct. 7, 2001.]

#### Cross References

Conditions of probation, see Title 6, § 3-313.

### § 3-503. Confidentiality of records

**A. Confidentiality.** Except as otherwise provided by subsection B or C of this section, the case records, case files, case notes, client records, or similar

records of a domestic violence or sexual assault program, or of any employee or trained volunteer of a program, regarding an individual who is residing or has resided in the program or who has otherwise utilized or is utilizing the services of the program or counselor shall be confidential and shall not be disclosed. For purpose of this subsection, the term "client records" shall include, but not be limited to, all communications, records and information regarding clients of domestic violence and sexual assault programs.

**B. Consent to disclosure.** The case records, case files, or case notes of programs specified in subsection A of this section shall be confidential and shall not be disclosed except with the written consent of the individual, or in case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf.

**C. Court order for disclosure; limitations.** The District Court may order disclosure of the case records, case files, or case notes of programs specified in subsection A of this section for good cause shown; provided that the Court shall not order the disclosure of the address of a domestic violence shelter, the location of any person seeking or receiving services from a domestic violence or sexual assault program, or any other information which is required to be kept confidential pursuant to subsection A of this section.

[NCA 01-157, § 4-103, approved Oct. 7, 2001.]

## CHAPTER 4. ORGANIZED INDIAN YOUTH COUNCILS—TRIBAL CHARTERS

### Section

- 4-101. Applications for charter; requisites.
- 4-102. Status, protections and powers.
- 4-103. Assistance of Executive Branch.
- 4-104. Membership.
- 4-105. Applications for approval.
- 4-106. Denial or approval; certification.
- 4-107. Grant of charter.
- 4-108. Youth Services program.
- 4-109. Requests for funding.
- 4-110. Certificate of Youth Council Charter.

### Historical and Statutory Notes

NCA 90-121, § 101(A) to (D), (G), provides:

“§ 102. Findings: The National Council finds that:

“(A) Over the past year, the Muscogee Nation has initiated efforts to establish Indian youth Councils in the planning and development of programs and activities designed to:

- “1. Promote youth and youth interaction.
- “2. Develop youth leadership potential.
- “3. Develop natural talents of youth.
- “4. Ensure the support and cooperation and coordination of efforts to enhance youth activities.
- “5. Provide a greater voice for youth and give them greater opportunities to participate in tribal leadership.
- “6. Promote healthy minds, spirits, and bodies among the youth.

“7. Provide opportunities for youth to experience and develop entrepreneurial interests.

“8. Increase youth awareness and understanding of the political process.

“(B) Youth represent the next general of leaders for our communities, tribe and nation.

“(C) Youth and adults have responded favorably to technical assistance provided by the tribal government to the youth council concept.

“(D) Official charters are needed for each organized Youth Council to give them a special status under tribal law, to outline the formal relationship between the chartered youth council and the tribal government, and outlining the duties and responsibilities of youth and adult advisors.”

“(G) In all aspects of tribal government, including the affairs of chartered Youth Councils, the Constitution of the Muscogee (Creek) Nation is the supreme law.”

### § 4-101. Applications for charter; requisites

A Youth Council Application for Charter to Muscogee (Creek) Nation must include the following:

- 1. Name of Youth Council
- 2. Purpose of Youth Council
- 3. Goals of Youth Council
- 4. Organization structure of Youth Council and provisions for elected representation.
- 5. Membership provisions and descriptions.
- 6. Annual elections of Youth Council officers.
- 7. Annual report of activities to the Creek Nation.
- 8. Identification of a minimum of three (3) Youth Council Adult Advisors. Adult Advisors must be age twenty-one (21) or over and serve a minimum of one-year terms.

## **Title 6, § 4–101**

## **CHILDREN AND FAMILY RELATIONS**

9. Youth Council Adult Advisor duties and responsibilities must be clearly described and specific.

10. Provision describing the replacement of Adult Advisors.

11. Meetings—frequency and location.

[NCA 90–121, § 101(E), approved April 3, 1991.]

### **§ 4–102. Status, protections and powers**

Chartered Youth Councils shall, under this law, have the status of the Muscogee (Creek) Nation as to all tax exemptions, sovereign immunities, and any other protections and powers as provided by Tribal law.

[NCA 90–121, § 101(F), approved April 3, 1991.]

### **§ 4–103. Assistance of Executive Branch**

The Executive Branch of the Muscogee (Creek) Nation shall provide technical assistance to youth groups in developing their charters.

[NCA 90–121, § 101(H), approved April 3, 1991.]

### **§ 4–104. Membership**

Upon recommendation of the chartered members of the community, college students up to the age of twenty-two (22) years old, may be asked to participate as a member of the chartered Youth Council.

[NCA 90–121, § 101(I), approved April 3, 1991.]

### **§ 4–105. Applications for approval**

Organized Indian Youth Councils of each community may apply in writing to their chartered community board (elected officials) for approval of their constitution and by-laws. If there is no chartered community then the Tribal youths may make application to the Office of the Principal Chief.

[NCA 90–121, §§ 102, 103, approved April 3, 1991.]

### **§ 4–106. Denial or approval; certification**

A. The Principal Chief may deny approval of an Indian Youth Council constitution and by-laws by written objections within ten (10) days after their submission and these objections shall be made known to the applying Youth Council.

B. The Principal Chief shall sign a certificate upon his approval of an Indian Youth Council constitution.

[NCA 90–121, §§ 104, 105, approved April 3, 1991.]

### **§ 4–107. Grant of charter**

Youth Council charters shall be granted within sixty (60) days after approval of the Youth Council constitution and by-laws under Title 6, § 4–106.

[NCA 90–121, § 106, approved April 3, 1991.]

**§ 4-108. Youth Services program**

The Youth Services program, under the Children and Family Services Department of the Executive Branch, would serve as a resource to the chartered Youth Councils, providing technical assistance, engaging speakers/presenters for their individual community meetings, disseminating relevant program information to designated Youth Council Officers, and assistance in obtaining requested materials on Youth Council activities.

[NCA 90-121, § 107, approved April 3, 1991.]

**§ 4-109. Requests for funding**

Chartered Youth Councils, by and through their elected officers, and with the requested advise/technical assistance as to procedure from Youth Program staff, could submit requests to the National Council or other potential funding sources for monies to be used as “seed money” to sponsor the start-up of economic development projects by and for the Youth Councils. This “technical assistance” would consist of advice on procedure; i.e., a workshop teaching the Youth “how to” develop a project narrative, goals and objectives, and a budget and justification, or “how to” prepare a cover letter to the Speaker for him to assign to Committee, “how to” lobby the Council members to find sponsors for the bill, and “how to” present oral arguments before the reviewing Committee for a recommendation of “Do pass”, etc. Technical assistance providers would not overstep the bounds of authority in “developing the proposals, bills, or project concepts for the Youth”, or in advocating “for” or “against” the legitimacy of the proposed project of the need for funding.

[NCA 90-121, § 108, approved April 3, 1991.]

**§ 4-110. Certificate of Youth Council Charter**

The form of the Certificate of Youth Council Charter shall be:

OFFICE OF THE PRINCIPAL CHIEF  
MUSCOGEE (CREEK) NATION  
YOUTH COUNCIL

WHEREAS, \_\_\_\_\_ Youth Council has submitted its constitution to the Principal Chief of Muscogee (Creek) Nation and that constitution has been approved and found not to be inconsistent with or in violation of the Constitution of the Muscogee (Creek) Nation:

NOW THEREFORE, I the undersigned Principal Chief of the Muscogee (Creek) Nation, by virtue of the powers vested in me by the Muscogee (Creek) National Council, do hereby grant a charter to:

(Name of Youth Council) to operate as a Youth Council of the Muscogee (Creek) Nation with all powers and privileges provided by law.

Two (2) youth pages shall be appointed by the Youth Services Coordinator to serve at each National Council monthly meeting.

Signature of Principal Chief

[NCA 90-121, attachment, approved April 3, 1991.]

## CHAPTER 5. GUARDIAN AND WARD

### Subchapter

1. General Provisions
2. Minors
3. Adults
4. Miscellaneous

### SUBCHAPTER 1. GENERAL PROVISIONS

#### Section

- 5-101. Short title.  
5-102. Subchapters in Act.  
5-103. Purpose of Act; legislative intent.  
5-104. Existing guardianships; compliance with Code; Muscogee (Creek) District Court review of cases.  
5-105. Guardian defined.  
5-106. Guardians ad litem excluded.  
5-107. Ward defined.  
5-108. Guardians classified.  
5-109. General guardian.  
5-110. Special guardian.  
5-111. Definitions.  
5-112. Persons and property subject to act; power of appointment; parental rights.  
5-113. Appointment of guardian; jurisdiction.  
5-114. Powers of the District Court.  
5-115. Place of hearing; order and decree.  
5-116. Guardians ad litem; power to appoint; appointment.  
5-117. Guardian of nonresident.  
5-118. Powers of guardian.  
5-119. Power of guardian of the person; report of change of ward's abode; power of limited guardians.  
5-120. Guardian of the property; power; fiduciary duty.  
5-121. Confidential information filed with District Court.  
5-122. Letters of guardianship.  
5-123. Guardianship handbook and duties summary.  
5-124. Computation of time.

#### § 5-101. Short title

This Code shall be known as the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

- |                                    |                                   |
|------------------------------------|-----------------------------------|
| Guardian and Ward ☞2.              | C.J.S. Guardian and Ward §§ 2, 5. |
| Indians ☞126.                      | C.J.S. Indians §§ 46 to 50, 53.   |
| Mental Health ☞101.                | C.J.S. Mental Health §§ 125, 127. |
| Westlaw Topic Nos. 196, 209, 257A. |                                   |

#### § 5-102. Subchapters in Act

The Muscogee (Creek) Nation Guardianship Code shall be composed of the following subchapters:

## GENERAL PROVISIONS

## Title 6, § 5–103

Subchapter I—General Provisions

Subchapter II—Minors

Subchapter III—Adults

Subchapter IV—Miscellaneous

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞2.	C.J.S. Guardian and Ward §§ 2, 5.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞101.	C.J.S. Mental Health §§ 125, 127.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–103. Purpose of Act; legislative intent

A. It is the purpose of the Muscogee (Creek) Nation Guardianship Code to promote the general welfare of all citizens by establishing a system of general and limited guardianships for minors and for incapacitated and partially incapacitated persons which provides for the protection of their rights and the management of their financial resources.

B. It is the purpose of the system of general and limited guardianships for incapacitated and partially incapacitated persons established by this act to provide for the participation of such persons, as fully as possible, in the decisions which affect them. It is the intent of the Muscogee (Creek) Nation;

1. That the District Court shall exercise the authority conferred by the Muscogee (Creek) Nation Guardianship Code so as to encourage the development of maximum self-reliance and independence of the incapacitated or partially incapacitated person and make appointive and other orders only to the extent necessitated by the mental and adaptive limitations or other condition of the incapacitated or partially incapacitated person warranting the procedure;

2. That in performing their duties and exercising their powers, guardians and limited guardians of incapacitated or partially incapacitated persons shall:

a. assure, to the extent reasonably possible, that the rights of the wards for whom they are appointed are protected;

b. encourage, to the extent reasonably possible, incapacitated or partially incapacitated persons to participate to the maximum extent of their abilities in all decisions which affect them and to act on their own behalf on all matters in which they are able to do so within the limitations imposed by the District Court; and

c. as appropriate, assist their wards to develop or regain to the maximum extent possible their capacity to meet the essential requirements for their health or safety or to manage their financial resources or both.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞2.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward §§ 2, 5.
Mental Health ☞101.	C.J.S. Indians §§ 46 to 50, 53.

## Title 6, § 5–103

## GUARDIAN AND WARD

C.J.S. Mental Health §§ 125, 127.

### § 5–104. Existing guardianships; compliance with Code; Muscogee (Creek) District Court review of cases

A. Any guardianship in existence on or created on or after the effective date of this Code shall comply with the provisions of the Muscogee (Creek) Nation Guardianship Code.

B. Unless otherwise modified or terminated, all guardianships established prior to the effective date of the Muscogee (Creek) Nation Guardianship Code shall remain in full force and effect.

C. All guardians shall retain the powers assigned to them, unless otherwise modified or terminated by the Muscogee (Creek) District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞2, 25.	C.J.S. Guardian and Ward §§ 2, 5, 45 to 48,
Indians ☞126.	50.
Mental Health ☞179.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209, 257A.	C.J.S. Mental Health §§ 176 to 179.

### § 5–105. Guardian defined

A guardian is a person appointed by the Muscogee (Creek) District Court to take care of the person or property of another.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–106. Guardians ad litem excluded

The term “guardian” includes persons appointed as general and limited guardians of the person, general and limited guardians of property, and special guardians, but does not include persons appointed as guardians ad litem.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Infants ☞77.	C.J.S. Infants §§ 321, 328 to 329.
Mental Health ☞485.	C.J.S. Mental Health §§ 314, 316 to 325.
Westlaw Topic Nos. 196, 209, 211, 257A.	

### § 5–107. Ward defined

A person over whom a guardian is appointed and a person over whose property a guardian or conservator is appointed is called a ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

## GENERAL PROVISIONS

## Title 6, § 5–111

### Library References

Guardian and Ward ☞9.5.	C.J.S. Guardian and Ward §§ 7 to 8.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞104.	C.J.S. Mental Health §§ 128 to 133.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–108. Guardians classified

Guardians are either:

1. General;
2. Limited; or
3. Special.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–109. General guardian

A. A general guardian is a guardian of the person or of all the property of the ward or of both such person and property.

B. A limited guardian is a person authorized by the Muscogee (Creek) Nation District Court to exercise limited powers over the person of the ward, or over the property of the ward or over both such person and property.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–110. Special guardian

A special guardian may be appointed by the Muscogee (Creek) Nation District Court pursuant to Section 5–315 of this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–111. Definitions

A. As used in the Muscogee (Creek) Nation Guardianship Code:

1. “Abuse” means the intentional act which causes physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to

**Title 6, § 5–111**

**GUARDIAN AND WARD**

an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;

2. “Confidential information” means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the District Court in connection with a proceeding pursuant to the provisions of this Code;

3. “District Court” means the Muscogee (Creek) Nation District Court;

4. “Estate” means the property of the person whose affairs are subject to a guardianship proceeding;

5. “Evaluation” means a professional assessment of:

a. the ability of an adult to receive and evaluate information effectively or communicate decisions;

b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his/her physical health or safety, or to manage his/her financial resources; and

c. the services necessary to provide for the ward;

6. “Exploitation” means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person, or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person, or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;

7. “Guardian of an incapacitated person” means a person who has been appointed by the District Court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of said person are met, to manage the estate or financial resources of said person, or both;

8. “Guardian ad litem” means, with respect to a guardianship proceeding, a person appointed by the District Court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;

9. “Guardianship plan” means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;

10. “Guardianship proceeding” means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a ward;

11. “Guardianship report” means any report required by the provisions of Sections 5–415 and 5–416 of this Title;

12. “Incapacitated person” means a person eighteen (18) years of age or older:

a. who is impaired by reason of:

## GENERAL PROVISIONS

## Title 6, § 5-111

(1) mental illness as defined by:

(A.) “Mentally ill person” means any person afflicted with a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

(2) mental retardation or developmental disability as defined by:

(A.) “Developmental disability” means a severely chronic disability of a person, five (5) years of age or older, which

(i.) is attributable to a physical or mental impairment or a combination of physical and mental impairments;

(ii.) is manifested before the person attains the age of twenty-two (22) years

(iii.) is likely to continue indefinitely;

(iv.) results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care,
2. Receptive and expressive language,
3. Learning,
4. Mobility,
5. Self-direction,
6. Capacity for independent living, or
7. Economic self-sufficiency; and

(v.) reflects the person’s need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong or of extended duration and are individually planned and coordinated;

(3) physical illness or disability;

(4) drug or alcohol dependency as defined by:

(a.) An “alcohol-dependent person” is one who uses alcoholic beverages to such an extent that it impairs his/her health, his/her family life, his/her occupation and compromises the health and safety of the community;

(5) such other similar cause; and

b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

(1) lacks the capacity to meet essential requirements for his/her physical health or safety; or

(2) is unable to manage his/her financial resources. Whenever in the Muscogee (Creek) Nation Code the term “incompetent person” appears and refers to a person who has been found by the District Court to be an incompetent person because of an impairment or condition described in this paragraph it shall have the same meaning as “incapacitated person” but shall not include a person who is a partially incapacitated person;

13. “Least restrictive dispositional alternative” means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his/her own behalf;

14. “Intangible personal property” means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

15. “Letters” means a document issued by the District Court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he/she will perform the duties of his/her office as guardian according to law;

16. A “limited guardian” means a person appointed by the District Court to serve as the guardian of a partially incapacitated person and who is authorized by the District Court to exercise only:

a. some of the powers of a guardian of the person or whose power as guardian of the person extends only to certain matters pertaining to the care or control of the ward as specified by the District Court, or

b. certain powers as guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward;

17. “Manage financial resources” or “manage the estate” means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

18. “Meet the essential requirements for physical health or safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur;

19. “Minor” means a person under eighteen (18) years of age;

20. “Neglect” means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person’s own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person’s own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury;

21. “Organization” means a corporation, trust, business trust, partnership, association, or other legal entity;

22. “Partially incapacitated person” means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian said person is unable to:

a. meet the essential requirements for his/her physical health or safety, or

b. manage all of his/her financial resources or to engage in all of the activities necessary for the effective management of his/her financial resources. A finding that an individual is a partially incapacitated person shall not

constitute a finding of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the District Court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

23. "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship proceeding; the guardian, and the guardian ad litem, if any such persons have been appointed;

24. "Person" means an individual;

25. "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;

26. "Restrictions on the legal capacity of a person to act in his/her own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;

27. "Subject of the proceeding" means a minor or an adult:

a. who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,

b. for whom a guardian or limited guardian has been appointed by the District Court, or

c. an adult for whom a conservator is requested or appointed; and

28. "Surcharge" means the imposition of personal liability by the District Court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

B. Nothing in this section shall be construed to mean an incapacitated person, a partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone, in accordance with the tenets and practices of a recognized church, religious denomination, or traditional medicine for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

C. Nothing contained in this subsection shall prevent the District Court from immediately assuming custody of a minor, pursuant to the Muscogee (Creek) Nation Code, Title 6, Chapter 1, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-112. Persons and property subject to act; power of appointment; parental rights**

A. Except as otherwise specifically provided by law, the Muscogee (Creek) Nation Guardianship Code applies to;

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## GUARDIAN AND WARD

1. Minors who are Creek citizens and reside within the jurisdictional boundaries of the Muscogee (Creek) Nation. Guardianships for minors established pursuant to subsection 3 of this act shall only be subject to provisions of the Muscogee (Creek) Nation Guardianship Code as provided in subsection B of this section;

2. Incapacitated and partially incapacitated Creek citizens who reside within the jurisdictional boundaries of Muscogee (Creek) Nation; and

3. Property located within the jurisdictional boundaries of the Muscogee (Creek) Nation of nondomiciliary Creek citizens who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of this Nation.

B. No person has any power as a guardian, except by appointment by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ⇌9.5.	C.J.S. Guardian and Ward §§ 7 to 8.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌104.	C.J.S. Mental Health §§ 128 to 133.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–113. Appointment of guardian; jurisdiction

A. A guardian of the person or property, or both, of a Creek citizen who resides within the jurisdictional boundaries of the Nation, who is a minor, or an incapacitated or partially incapacitated person, may be appointed in all cases by the District Court as provided in this Title.

B. After the service of notice in a proceeding seeking the appointment of a guardian or other order, in subsequent proceedings pertaining to the guardianship of a ward and until termination of the proceeding, the District Court has exclusive jurisdiction to determine:

1. The need for a guardian or other order; and
2. How the estate of the ward shall be managed, expended, or distributed to or for the use of the ward or the dependents of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ⇌13(1).	C.J.S. Guardian and Ward §§ 13, 28.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209.	

### § 5–114. Powers of the District Court

A. In all cases the District Court has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward.

B. The District Court has jurisdiction over guardianship proceedings, and has the following powers, this must be exercised in the manner prescribed by law, to:

## GENERAL PROVISIONS

## Title 6, § 5–115

1. Appoint and remove guardians for minors and for incapacitated and partially incapacitated persons;
2. Issue and revoke letters of guardianship;
3. Control the conduct of guardians with regard to the, care and treatment provided to their wards;
4. Control the conduct of guardians with regard to the management of the financial resources of their wards, including but not limited to the power to:
  - a. compel guardians to submit plans, reports, inventories and accountings to the District Court;
  - b. compel payment and delivery by guardians of property belonging to their wards;
  - c. order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian; and
  - d. settle the accounts of guardians;
5. Appoint appraisers of the property of wards;
6. Compel the attendance of witnesses and the production of documents and property;
7. After a petition has been filed for appointment of a guardian for a minor, make or modify any temporary order of guardianship during the progress of the proceedings that would be in the best interest of the ward. Any such temporary order may be entered ex parte with written notice sent to all parties directing them to appear before the District Court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary guardianship; and
8. Exercise all powers conferred by the Muscogee (Creek) Nation Guardianship Code and to make such orders as may be necessary for the exercise of said powers.
  - C. The District Court shall establish by court rule a system for:
    1. The filing of guardianship cases and records; and
    2. Monitoring the filing of annual reports and inventories required by this title for the purpose of assuring that the District Court will be notified of annual reports as they fall due and whether or not said reports are filed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ☞126, 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

### § 5–115. Place of hearing; order and decree

- A. The power conferred upon the District Court in relation to guardians and wards may be exercised in chambers or elsewhere in the discretion of the

## Title 6, § 5–115

## GUARDIAN AND WARD

Judge. Any hearing held pursuant to the provisions of this act may be held at such place as the District Court directs.

B. Any order appointing a guardian must be entered as and become a decree of the District Court.

C. Except as otherwise specifically provided by this act, the provisions of Title 47 of the Muscogee (Creek) Nation Code Annotated relative to the estates of decedents, so far as they relate to the practice in the District Courts, apply to proceedings under this title and the rules of civil procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to the Muscogee (Creek) Nation Guardianship Code unless otherwise provided in this title or Title 27 of the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ⇨126, 133, 519.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 46 to 50, 53, 150 to 179.

## § 5–116. Guardians ad litem; power to appoint; appointment

A. Nothing contained in this title affects or impairs the power of the District Court to appoint a guardian ad litem to defend the interests of any minor interested in any suit or matter pending therein.

B. At any point in a guardianship proceeding, the subject of the proceeding, his/her attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian ad litem appointed by the District Court, or the District Court on its own motion may appoint a guardian ad litem. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ⇨126, 133, 534.  
Infants ⇨76.  
Mental Health ⇨485.  
Westlaw Topic Nos. 209, 211, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 150 to 179.  
C.J.S. Infants §§ 195, 321 to 336, 338 to 343.  
C.J.S. Mental Health §§ 314, 316 to 325.

## § 5–117. Guardian of nonresident

A guardian of the property of a person not residing within the Nation, who is a minor, or an incapacitated or partially incapacitated person, may be appointed by the District Court as provided by this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ⇨36.  
Indians ⇨126.  
Mental Health ⇨211.  
Westlaw Topic Nos. 196, 209, 257A.  
C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.

C.J.S. Indians §§ 46 to 50, 53.  
C.J.S. Mental Health § 183.

### § 5–118. Powers of guardian

A guardian has only those powers over the person or the property of the ward, or both such person and property, as ordered by the District Court pursuant to this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞28, 36.	C.J.S. Guardian and Ward §§ 70 to 78, 100, 122.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179, 211.	C.J.S. Mental Health §§ 176 to 179, 183.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–119. Power of guardian of the person; report of change of ward's abode; power of limited guardians

A. A guardian, including a special guardian, of the person is charged with the custody of the ward, and must look to the support, health and education of the ward. Except as provided by Section 5–313 of this Title, he may fix the place of abode of the ward at any place within the Muscogee (Creek) Nation, but not elsewhere, without permission of the District Court and any change in the place of abode of a ward within the Creek Nation shall be reported to the District Court.

B. Limited guardians of partially incapacitated persons shall not have custody of the person of the ward and shall have only those powers or controls over the person of the ward specifically ordered in a dispositional order or other order of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞29.	C.J.S. Guardian and Ward §§ 51 to 55.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–120. Guardian of the property; power; fiduciary duty

A. A guardian of the property must keep safely the property of his/her ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the District Court, but must so far as it is in his/her power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward or the successors of the ward at the close of his/her guardianship, in as good condition as he received it.

B. A guardian of the property, in relation to powers conferred pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code, shall act as a fiduciary and shall perform, diligently and in good faith, as a prudent person would in managing his/her own property, not with regard to speculation but

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## GUARDIAN AND WARD

with regard to conservation and growth, and the specific duties and powers assigned by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ⇌36.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌211.	C.J.S. Mental Health § 183.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–121. Confidential information filed with District Court

A. Confidential information filed with or submitted to the District Court in conjunction with any proceeding pursuant to the Muscogee (Creek) Nation Guardianship Code shall not constitute a public record and shall be sealed by the District Court. Access to confidential information shall be strictly controlled. Except upon District Court order, no confidential information shall be disclosed to persons other than:

1. The subject of the proceeding and the subject's attorney;
2. The guardian ad litem;
3. If the subject of the confidential information is a ward, the guardian of such ward;
4. If the subject of the confidential information is the guardian, the ward and the subject's attorney, and the attorney of such guardian;
5. An authorized representative of the United States Department of Veterans Affairs upon presentation of proper identification;
6. An authorized representative of the Oklahoma Department of Human Services or Muscogee (Creek) Nation Children and Family Services upon presentation of proper identification; or
7. An authorized representative of the Attorney General's Office or Light-horse Police Department or other law enforcement department having jurisdiction.

B. The fact of the existence of a guardianship of a person or that person's estate shall not be considered confidential information.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ⇌13(1).	C.J.S. Bankruptcy §§ 830 to 834.
Indians ⇌126.	C.J.S. Guardian and Ward §§ 13, 28.
Mental Health ⇌21.	C.J.S. Indians §§ 46 to 50, 53.
Records ⇌32.	C.J.S. Mental Health §§ 17 to 21.
Westlaw Topic Nos. 196, 209, 257A, 326.	C.J.S. Records §§ 80, 82 to 88.

### § 5–122. Letters of guardianship

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌16.  
 Indians ⇌126.  
 Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 11.  
 C.J.S. Indians §§ 46 to 50, 53.

**§ 5–123. Guardianship handbook and duties summary**

The District Court Clerk’s Office of the Muscogee (Creek) Nation shall prepare a guardianship handbook for distribution. The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to adult guardianships and the duties and responsibilities of such guardians. In conjunction with the guardianship handbook, the District Court Clerk’s Office of the Muscogee (Creek) Nation shall develop a summary of the duties of guardians including, but not limited to, statutory notices, timetables, and required District Court approvals. The summary shall emphasize the significance of timely accountability to the District Court and to the ward as well as the sanctions and penalties which may be imposed for failure to comply with the requirements of the law or orders of the District Court. Copies of the handbook shall be made available to the public through the District Court Clerk’s Office in English and in Muscogee.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**§ 5–124. Computation of time**

The time within which an act is to be done, as provided for in this Code, shall be computed by excluding the first day and including the last day. If the last day is a weekend or legal holiday, it shall be excluded.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ⇌126.  
 Time ⇌3.  
 Westlaw Topic Nos. 209, 378.

C.J.S. Indians §§ 46 to 50, 53.  
 C.J.S. Time §§ 2, 4, 14.

**SUBCHAPTER 2. MINORS****Section**

- 5–201. When guardian of minor to be appointed; petition; notice.
- 5–202. Nominations of guardian.
- 5–203. Nomination and appointment of guardian; age of minor.
- 5–204. Nomination of guardian by minor at 14 years of age; approval of District Court.
- 5–205. Appointment when ward’s nominee ineligible.
- 5–206. Guardian in charge of education.
- 5–207. Education and maintenance of minor; income from property of minor; orders appointing guardian.
- 5–208. Conditions of appointment.
- 5–209. Investments authorized.
- 5–210. Contracts on lives of wards and beneficiaries of trust funds.
- 5–211. Interest of guardian.
- 5–212. When power of guardian appointed by parent ceases.
- 5–213. Release of minor ward at majority.
- 5–214. Limitation of discharge by the District Court.
- 5–215. Delivery of up to \$10,000 of minor’s estate to custodian, parent or minor.

**§ 5–201. When guardian of minor to be appointed; petition; notice**

A. The Muscogee (Creek) Nation District Court when it appears necessary or convenient may appoint guardians for the persons and estates, or either, or both of them, of minors.

B. Such appointment shall be made on the verified petition of a relative or other person on behalf of such minor.

C. Before making the appointment, the District Court must cause notice of the hearing on the petition for appointment of a guardian for a minor to be given to the minor himself if the minor has attained the age of fourteen (14) as of the date the petition is filed. The District Court shall also cause notice to be sent to the following persons:

1. The then-living parents of the minor and any other person having care of the minor, if such parent or person is not one of the petitioners;

2. If the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners and who is not married to one of the petitioners; and

3. If there is no such then-living grandparent or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor residing within the Muscogee (Creek) Nation.

D. Such notice shall be mailed to each person, entitled to notice pursuant to this section, at that person’s address as last-known to the petitioner, at least ten (10) days prior to the date set by the District Court for hearing on the petition. Provided the District Court may direct a shorter notice period if the District Court deems such shorter notice period to be appropriate under the circumstances. If there is no person other than the minor who is entitled to notice, or if the address of any person, other than the minor, who is entitled to notice is not known to the petitioner, the petition shall so allege. The District Court may direct that notice, other than notice to the minor if the minor has attained the age of fourteen (14), be waived or be given to any person or persons other than the minor in such manner as the District Court determines and directs.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Cross References**

Application for relief, notice, see Title 6, § 5–417.

Hearing, notice and order, see Title 6, § 5–445.

Copies of annual report, objections, hearing, see Title 6, § 5–416.

Termination of authority and responsibility of guardian, notice and hearing, see Title 6, § 5–463.

**Library References**

Guardian and Ward ⇔9.5, 13(3).

Indians ⇔133, 519.

Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 7 to 8, 29 to 31.

C.J.S. Indians §§ 150 to 179.

**§ 5–202. Nominations of guardian**

A. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the parent so nominating:

1. If the child is born in wedlock, by either parent or by both parents.
2. If the child is born out of wedlock, by the mother of the child or by the natural father of the child, if said natural father has acknowledged paternity or has been judicially determined to be the father of the child at a paternity proceeding, or by both such mother and father.

B. A nomination made by a parent who has relinquished parental rights or whose parental rights have been terminated shall have no effect.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞10, 11.  
Indians ☞133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 17 to 27.  
C.J.S. Indians § 150.

### § 5–203. Nomination and appointment of guardian; age of minor

A. If the minor is under the age of fourteen (14) years, the District Court may name and appoint his/her guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his/her own guardian, who, if approved by the District Court, must be appointed accordingly.

B. The District Court, in appointing a guardian for a minor, is to be guided by this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞10, 13.  
Indians ☞133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 13, 19 to 35,  
49.  
C.J.S. Indians § 150.

### § 5–204. Nomination of guardian by minor at 14 years of age; approval of District Court

When a guardian has been appointed by the District Court for a minor under the age of fourteen (14) years, the minor, at any time after he has attained age fourteen (14), may nominate his/her own guardian, subject to the approval of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞10, 13.  
Indians ☞133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 13, 19 to 35,  
49.  
C.J.S. Indians § 150.

### § 5–205. Appointment when ward's nominee ineligible

If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the District Court or if, after being notified by the District Court, the minor neglects for ten (10) days to nominate a suitable person, the District Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞10, 13.	C.J.S. Guardian and Ward §§ 13, 19 to 35,
Indians ☞133.	49.
Westlaw Topic Nos. 196, 209.	C.J.S. Indians § 150.

**§ 5–206. Guardian in charge of education**

If the minor has no father or mother living who is competent to have charge of the education of the minor, the guardian appointed by the District Court shall have the same.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞30.	C.J.S. Guardian and Ward §§ 58 to 69.
Indians ☞140.	C.J.S. Indians § 56.
Westlaw Topic Nos. 196, 209.	

**§ 5–207. Education and maintenance of minor; income from property of minor; orders appointing guardian**

A. If any minor, having a parent or parents living, has property, the income of which is sufficient for his/her maintenance and education in a manner more expensive than such parent or parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of the property of the minor in whole or in part, as judged reasonable and as directed by the District Court. The charges therefore may be allowed accordingly in the settlement of the accounts of the guardian of the minor.

B. 1. Any order appointing a guardian of the minor who has a parent living or other person legally responsible for the support of the child shall:

- a. provide for the payment of child support by the parent or other responsible party; and
- b. contain an income assignment provision pursuant to this title.

2. Any guardianship for a minor created on or after the effective date of this Code, shall comply with the provisions of this subsection. Guardianships for a minor in existence prior to the effective date of this Code, shall comply with the provisions of this subsection as ordered by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞30, 58.	C.J.S. Guardian and Ward §§ 58 to 69, 103 to
Indians ☞139 to 141.	109.
Westlaw Topic Nos. 196, 209.	C.J.S. Indians §§ 36, 54 to 56.

**§ 5–208. Conditions of appointment**

A. When any person is appointed guardian of a minor, the District Court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the minor.

B. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞13(7).  
Indians ☞133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 33 to 35, 49.  
C.J.S. Indians § 150.

### § 5–209. Investments authorized

A guardian legally holding funds or assets belonging to or for the benefit of a minor may with the approval of the District Court, invest such funds or assets or any part thereof, in single premium life, single premium endowment, or single premium annuity contracts of legal reserve life insurance companies as are duly licensed and qualified to transact business.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞53.  
Indians ☞133, 141(1).  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 115 to 121.  
C.J.S. Indians §§ 36, 150.

### § 5–210. Contracts on lives of wards and beneficiaries of trust funds

Such contracts may be issued on the life of a ward or beneficiary of a trust fund, and shall be so drawn by the insuring company so that the proceeds or avails thereof shall be the sole property of the person whose funds are invested.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### § 5–211. Interest of guardian

Such contracts may not be purchased from any company for which the guardian is acting as agent, or receives any commission, or part of any commission, directly or indirectly paid by such company to its agent soliciting or selling such contract.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### § 5–212. When power of guardian appointed by parent ceases

The power of a guardian appointed for a minor ceases upon:

1. The removal of the guardian;
2. The solemnized marriage of the ward; or
3. The ward's attaining majority.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞20, 21, 25.  
Indians ☞133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 39 to 40, 45 to 48, 50.  
C.J.S. Indians § 150.

**§ 5–213. Release of minor ward at majority**

After a minor ward has come to his/her majority, such ward may settle accounts with his/her guardian and give him a release, which is valid, subject to approval of the District Court, if obtained fairly and without undue influence.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨20.  
Indians ⇨133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 39.  
C.J.S. Indians § 150.

**§ 5–214. Limitation of discharge by the District Court**

A guardian of a minor appointed by the District Court is not entitled to his/her discharge until one (1) year after the majority of the ward unless the District Court determines that the minor has earlier validly released said guardian after a final accounting.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨20.  
Indians ⇨133.  
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 39.  
C.J.S. Indians § 150.

**§ 5–215. Delivery of up to \$10,000 of minor's estate to custodian, parent or minor**

A. 1. When the whole estate of a minor does not exceed the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

a. the delivery of the property or any portion thereof to one or more custodians or to one or more other custodians designated by the District Court, or

b. the payment or delivery of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor. The person receiving the property shall pay necessary expenses of the minor and hold, manage, and dispose of the property in the manner directed by the District Court.

2. When the whole estate of a minor exceeds the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

a. the delivery of property having a value of up to ten thousand dollars (\$10,000.00) to one or more custodians or to one or more other custodians designated by the District Court, or

b. the payment or delivery of up to ten thousand dollars (\$10,000.00) of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor. The person receiving the property shall pay necessary expenses of the minor and hold, manage, and dispose of the property in the manner directed by the District Court.

B. The person making payment, delivery, transfer or issuance of property or evidence thereof to the individual or custodian designated by the District Court pursuant to this section is discharged and released to the same extent as if payment, delivery, transfer, or issuance was made to a guardian of the minor, and the person is not required to see to the application thereof. A person making payment, delivery, transfer, or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for by this act.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Indians ☞133, 141(1).	C.J.S. Indians §§ 36, 150.
Infants ☞32.	C.J.S. Infants §§ 167 to 168.
Westlaw Topic Nos. 209, 211.	

### SUBCHAPTER 3. ADULTS

#### Section

- 5-301. Petition for appointment of guardian.
- 5-302. Nomination of guardians or alternate guardians by adult; priorities of nominations.
- 5-303. Nomination of guardian or limited guardian by will.
- 5-304. Priorities for selection by District Court of guardian or limited guardian; appointment of organization; determination of suitability; appointment of public agency.
- 5-305. District Court appointment where nominee is unable, unwilling or cannot qualify to serve.
- 5-306. Rights of individual alleged to be or found to be incapacitated or partially incapacitated; confidentiality; relief from costs and fees; record.
- 5-306.1. District Court-appointed advocates for vulnerable adults programs.
- 5-307. Appointment of counsel; explanation and inquiry by District Court; replacement of appointed counsel; determination of independence of retained counsel; record.
- 5-308. Evaluations of subject of proceeding.
- 5-309. Hearing on petition; setting of date.
- 5-310. Notice of hearing.
- 5-311. Determination by District Court; order appointing guardian; explanation on record.
- 5-312. Appointment of guardians or limited guardians.
- 5-313. Order appointing guardian; specific determinations of capacity; submission of guardianship plan; other orders.
- 5-314. Assignment of powers to limited guardian; endorsement of limitation or specification of assets upon letters of guardianship.
- 5-315. Appointment of special guardian; powers; duration; bond; removal.
- 5-316. Proceedings to determine restoration to capacity.
- 5-317. Presumption of capacity when guardian discharged without appointment of another.
- 5-318. Duties and powers of guardian or limited guardian.
- 5-319. Limitation of powers of guardian.
- 5-320. Proposed plan for care and treatment of ward.
- 5-321. Disposition of financial resources under supervision and control of guardian or limited guardian; petition for restoration of capacity.
- 5-322. Proposed plan for management of financial resources of ward.
- 5-323. Sale or lease of homestead of incapacitated or partially incapacitated person.
- 5-324. Sale or lease of real property by guardian; approval; joinder of spouse.

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### Section

5-325. Application; Sections 5–323 and 5–324 cumulative.

5-326. Estates of incapacitated or partially incapacitated persons not exceeding \$10,000.00; disposition; discharge and release.

### § 5–301. Petition for appointment of guardian

A. Any person interested in the welfare of a person believed to be an incapacitated person or partially incapacitated person may file a verified petition alleging that such person is an incapacitated or partially incapacitated person, and request the appointment of a guardian.

B. The petition shall be verified and shall specify:

1. The names and addresses of persons entitled to notice pursuant to Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner;

2. The nature and degree of the alleged incapacity;

3. The relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the subject of the proceeding which gave rise to the allegations; and

4. The estimated value of all intangible personal property of the ward.

C. A copy of the results of any physical, psychological or other appropriate professional evaluation of the condition of the subject of the proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

D. A guardianship plan or plans substantially in the form required by Section 5–320 or Section 5–322 of this Title or both, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the District Court at the time of the hearing.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ☞126, 511.

Mental Health ☞104, 126.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 128 to 133, 155.

### § 5–302. Nomination of guardians or alternate guardians by adult; priorities of nominations

A. Every person eighteen (18) years of age or older who is of sound mind and not acting under duress, menace, fraud or undue influence, may nominate a guardian of his/her person and property, or of either, as provided by this section. Such nomination shall, in the event of the incapacity or partial incapacity of said person be proved in the same manner as any other writing. The nomination shall be binding on the District Court subject to the disqualification of the nominee by the District Court.

B. Such nomination shall be in writing and shall be signed by the person making such nomination and witnessed by someone other than the nominated guardian. The nomination shall be substantially in the following form:

Nomination of Guardian by an Adult

I, \_\_\_\_\_, being of sound mind and not acting under any duress, (name) menace, fraud, or other undue influence do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the guardian of my (person, property, both) in the event that after the date of this instrument I become incapacitated.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Executed at \_\_\_\_\_ (city, state) on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

C. In such nomination, the person making it may nominate an alternate guardian or guardians to act in the event a previously named nominee is unable or unwilling to act as guardian.

D. If the same person has executed more than one nomination of a guardian:

- 1. The most recent nomination shall control; or
- 2. If two or more nominations bear the same most recent date the District Court may appoint one of the nominees or may appoint more than one of the nominees as co-guardians upon determining the nominator to be an incapacitated or partially incapacitated person.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇌126. C.J.S. Indians §§ 46 to 50, 53.  
Mental Health ⇌116, 120. C.J.S. Mental Health §§ 145 to 149, 151, 153  
Westlaw Topic Nos. 209, 257A. to 154.

§ 5-303. Nomination of guardian or limited guardian by will

A parent of an unmarried incapacitated or partially incapacitated person, the spouse of a married incapacitated or partially incapacitated person, or an adult child of such person who is serving as guardian or limited guardian may nominate by will, or by affidavit executed by the nominating parent or parents, spouse, or adult child, an individual to serve as guardian or limited guardian upon the death or incapacity of the nominator. Such nomination shall be executed by the nominator in the same manner as provided for nominations made pursuant to Section 5-302 of this Title.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇌126. C.J.S. Indians §§ 46 to 50, 53.  
Mental Health ⇌116. C.J.S. Mental Health §§ 145 to 149.  
Westlaw Topic Nos. 209, 257A.

**§ 5–304. Priorities for selection by District Court of guardian or limited guardian; appointment of organization; determination of suitability; appointment of public agency**

A. The following priorities shall guide the selection, by the District Court of a guardian or limited guardian of an incapacitated or partially incapacitated person from among those eligible:

1. The individual or individuals nominated by the subject of the proceeding pursuant to Section 5–302 of this Title;

2. The current guardian or limited guardian appointed or recognized by the appropriate District Court of any other jurisdiction in which the incapacitated or partially incapacitated person resides;

3. An individual nominated by the will or by other writing of a deceased parent, spouse, or an adult child who was serving as the guardian or limited guardian of the subject of the proceeding;

4. The spouse of the subject of the proceeding;

5. An adult child of the subject of the proceeding;

6. A parent of the subject of the proceeding;

7. A sibling of the subject of the proceeding; or

8. Any individual approved by the District Court with whom the subject of the proceeding has been living for more than six (6) months prior to the filing of the petition. Provided that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act,<sup>1</sup> the Residential Care Act,<sup>2</sup> the Group Homes for Persons with Developmental or Physical Disabilities Act,<sup>3</sup> and all other applicable federal statutes shall not be appointed guardian or limited guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity and is otherwise eligible for appointment.

B. When the guardian or limited guardian of an incapacitated or partially incapacitated person is the guardian of property only, the District Court may appoint an organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest, when:

1. Such organization is nominated by the subject of the proceeding pursuant to Section 5–302 of this Title; or

2. Such organization is nominated by a person eligible to make such nomination pursuant to Section 5–303 of this Title; or

3. The appointment of such organization is in the best interest of the subject of the proceeding.

C. The District Court shall make reasonable inquiry to determine whether the person or organization proposed to serve as the guardian or limited guardian of an incapacitated or partially incapacitated person is suitable and will exercise the powers and carry out the duties and responsibilities of guardian or limited guardian in the best interest of the ward. The District

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Court shall also inquire of the proposed guardian of the person of the ward as to how the guardian proposes to provide for the care of the ward, and of the proposed guardian of the estate of the ward as to how the guardian proposes to manage the property of the ward and to provide for the ward's financial care. The District Court shall make such orders with respect thereto as the District Court deems to be for the best interest of the ward.

D. A public agency shall not be appointed to serve as guardian for an adult except as provided in the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

<sup>1</sup> 63 O.S. § 1–1901 et seq.

<sup>2</sup> 63 O.S. § 1–819 et seq.

<sup>3</sup> 10 O.S. § 1430.1 et seq.

### Library References

Indians ☞126.

Mental Health ☞103, 115.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 137, 150.

### § 5–305. District Court appointment where nominee is unable, unwilling or cannot qualify to serve

In the event the person nominated is unable, unwilling, or cannot qualify to so serve, the District Court shall make a finding of such fact and shall proceed to the appointment of a guardian as if such nomination had not been made, taking into account any alternative guardian named in the nomination.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ☞126, 534.

Mental Health ☞116, 143.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 145 to 149.

### § 5–306. Rights of individual alleged to be or found to be incapacitated or partially incapacitated; confidentiality; relief from costs and fees; record

A. In all hearings conducted pursuant to this Code, an individual who is alleged to be or found to be an incapacitated or partially incapacitated person shall have a right to:

1. Notice as provided in Section 5–310 of this Title;
2. Be present at such hearings;
3. Compel the attendance of witnesses;
4. Present evidence;
5. Cross-examine witnesses;
6. Appeal adverse orders and judgments as provided by the rules of civil procedure;
7. Representation by District Court-appointed counsel or private counsel upon request; and
8. Request that the proceedings be closed to the public.

B. The requirement of notice to the subject of the proceeding shall not be waived. The requirement that the subject of the proceeding be present at a hearing may be waived only for good cause shown. The District Court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the subject of the proceeding be present is waived, the District Court shall make a finding on the record as to the reason the subject of the proceeding is not present at the proceeding and the alternatives which were considered to enable the subject of the proceeding to be present.

C. Any person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The District Court may grant the request to participate upon determining that the best interest of the subject of the proceeding will be served thereby. The District Court may, for good cause shown, grant the request of such person for permission to be admitted to the closed proceeding upon determining that said person has a legitimate interest in the proceedings. In granting either request, the District Court may impose any appropriate conditions it deems necessary.

D. If the subject of the proceeding is under the influence of psycho tropic medication, during any judicial hearing held pursuant to the Muscogee (Creek) Nation Guardianship Code, the District Court shall be advised of this fact, the purpose of the medication, and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

E. Statements of individuals alleged or found to be partially incapacitated or incapacitated persons made during the course of the evaluations, examinations and treatment pursuant to this Code shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to this Code.

F. Costs and filing fees may be waived for a party to a proceeding held pursuant to this Code.

G. At the request of any party to a proceeding pursuant to the provisions of this Code, the District Court shall order that a stenographic or mechanical record of the proceeding be made.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 510, 518.

Mental Health ☞127, 133, 137.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 156 to 162.

**§ 5–306.1. District Court-appointed advocates for vulnerable adults programs**

A. As used in this section:

1. “District Court-Appointed Advocates for Vulnerable Adults” or “DCAA-VA” means a responsible adult who has been trained and is supervised by a District Court-Appointed Advocates for Vulnerable Adults program recognized by the District Court, and who has volunteered to be available for appointment

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under this section to serve as an officer of the District Court, as a Guardian Ad Litem to represent the best interests of any vulnerable adult over whom the District Court exercises jurisdiction, until discharged by the District Court;

2. "District Court–Appointed Advocates for Vulnerable Adults Program" means an organized program, administered by the Division of Children and Family Services, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the District Court as guardian's ad litem, to represent the best interests of a vulnerable adult;

3. "Vulnerable adult" means a person, eighteen (18) years of age or older, who is a victim of abuse, neglect or exploitation, or who is disabled; and

4. "Best interests" means a determination with regard to a vulnerable adult that is made from the perspective of the vulnerable adult, considering, but without giving primary importance to, the convenience of the vulnerable adult's relatives, care givers or health care providers, and without regard for the perceived quality of life of the vulnerable adult or the vulnerable adult's perceived nearness to death.

B. Children and Family Services shall develop policy guidelines for District Court–Appointed Advocates for Vulnerable Adults Program.

C. 1. Whenever a petition is filed alleging that a potential ward, hereinafter referred to as a vulnerable adult, is abused, neglected, exploited or disabled, or for any other action related to the vulnerable adult, the District Court may appoint a Guardian Ad Litem for the vulnerable adult at any time subsequent to the filing of the petition.

2. The District Court may appoint a Guardian Ad Litem upon the request of the vulnerable adult, the attorney of the vulnerable adult, or any other party to the action.

3. A Guardian Ad Litem shall not be the Attorney General, an employee of the Attorney General's office, the vulnerable adult's attorney, an employee of the District Court, or an employee of any agency having duties or responsibilities related to the vulnerable adult.

4. The Guardian Ad Litem shall be appointed to advocate objectively on behalf of the vulnerable adult and act as an officer of the District Court to investigate all matters concerning the best interests of the vulnerable adult. In addition to other duties required by the District Court and as specified by the District 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 vulnerable adult in appropriate settings, and interview relatives, health care providers, adult protective services workers and any other persons with knowledge relevant to the case,

b. advocate for the vulnerable adult's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the vulnerable adult when necessary,

c. maintain the confidentiality of information related to the case,

d. monitor the vulnerable adult's best interests throughout any judicial proceeding, and

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e. present written reports on the vulnerable adult's best interests that include conclusions and recommendations, and the facts upon which they are based.

5. The Guardian Ad Litem shall be given access to the District 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 vulnerable adult's relatives, guardian or custodian, made pursuant to the laws relating to adult abuse and neglect, including reports generated by service providers.

D. Whenever a District Court-Appointed Advocate for Vulnerable Adults program is available to the District Court to serve as a guardian ad litem, priority shall be given to appointment of the District Court-Appointed Advocate for Vulnerable Adults to serve as Guardian Ad Litem for the vulnerable adult regardless of whether a Guardian Ad Litem has been requested pursuant to the provisions of this subsection.

1. For purposes of this section, the terms "District Court-Appointed Advocate for Vulnerable Adults" and "Guardian Ad Litem" shall have the same function. In like manner, a District Court-Appointed Advocate for Vulnerable Adults, except as specifically otherwise provided by law or by the District 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 of the Supreme Court.

2. A District Court-Appointed Advocate for Vulnerable Adults shall serve without compensation.

E. Any person participating in a judicial proceeding as a District Court-Appointed Advocate for Vulnerable Adults 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.

1. Any person serving in a management position of a District Court-Appointed Advocate for Vulnerable Adults 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 District Court-Appointed Advocate for Vulnerable Adults organization advocates, managers or directors.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**§ 5–307. Appointment of counsel; explanation and inquiry by District Court; replacement of appointed counsel; determination of independence of retained counsel; record**

A. If at or prior to a hearing on a petition alleging a person to be an incapacitated or partially incapacitated person, or if at any point in the course of a proceeding pursuant to said petition, the subject of the proceeding is not represented by counsel, the District Court may appoint an attorney as provided in this section, and the District Court may at any time subsequent to the filing of said petition appoint a Guardian Ad Litem to assist the District Court in making a determination as to whether or not an attorney should be appointed for the subject of the proceeding.

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B. If the subject of the proceeding is present at the hearing on the petition and is not represented by counsel at said hearing:

1. The District Court shall explain on the record:

a. the purpose and potential consequences of the proceeding; and  
b. the right to be represented by counsel upon request and that if the subject of the proceeding wishes to be represented by counsel, the District Court will appoint an attorney to represent the subject of the proceeding at the hearing on the petition.

2. Following such explanation the District Court shall inquire of the subject of the proceeding whether he wishes to have an attorney appointed.

a. If the subject of the proceeding requests the appointment of an attorney, the District Court shall appoint an attorney.

b. If the subject of the proceeding does not request the appointment of an attorney and the District Court is in doubt as to whether the subject of the proceeding is capable of making an informed decision regarding the appointment of an attorney and the District Court determines that it is in the best interest of the subject of the proceeding to be represented by counsel, the District Court shall appoint an attorney for the subject of the proceeding, or if the District Court determines that the appointment of counsel is not in the best interest of the subject of the proceeding, the District Court shall not appoint an attorney.

c. If the subject of the proceeding does not request the appointment of an attorney and the District Court determines that the subject of the proceeding is capable of making an informed decision regarding the appointment of an attorney, the District Court shall not appoint an attorney.

3. The District Court may make the explanation and inquiry required by this subsection, regarding the purpose and potential consequences of the proceeding and the appointment of an attorney, prior to the hearing on the petition. At the hearing on the petition the District Court shall include on the record the facts related to said explanation and inquiry, the determinations made by the District Court with respect thereto and the reasons for such determinations.

C. If the subject of the proceeding is not present at the hearing on a petition alleging him to be an incapacitated or partially incapacitated person and is not represented by counsel and the District Court has not made the explanation and inquiry as provided by paragraph 3 of subsection B of this section, the District Court shall make sufficient inquiry to determine affirmatively whether it would be in the best interest of the subject of the proceeding to appoint counsel to represent the subject of the proceeding at the hearing on the petition.

1. If the District Court determines that it is in the best interest of the subject of the proceeding to be represented by counsel, the District Court shall appoint an attorney.

2. If the District Court determines that the appointment of counsel is not in the best interest of the subject of the proceeding, the District Court shall not appoint an attorney.

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D. Whenever the District Court determines that the appointment of counsel is not in the best interests of the subject of the proceeding, or if the subject of the proceeding does not request the appointment of an attorney and the District Court determines that the subject of the proceeding is capable of making an informed decision regarding the appointment of counsel, the District Court shall explain on the record the reason for such determination.

E. 1. If an attorney is appointed, the District Court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for the hearing but in no event less than five (5) days after such appointment.

2. The attorney appointed by the District Court shall be replaced by another attorney if:

- a. the subject of the proceeding prefers the services of an attorney other than the one initially appointed for him;
- b. the preferred attorney agrees to accept the responsibility; and
- c. the subject of the proceeding or the attorney whom he prefers notifies the District Court of the preference and the attorney's acceptance of employment.

3. An attorney appointed pursuant to this section shall contact the subject of the proceeding promptly after receiving notification of his/her appointment. An attorney appointed pursuant to the provisions of this section shall be compensated.

F.1. Except as provided by paragraph 2 of this subsection or as otherwise ordered by the District Court, the responsibility of an attorney appointed pursuant to the provisions of this section ceases upon the appointment of a guardian or limited guardian of the subject of the proceeding or when a determination not to appeal the decision is made. The District Court may appoint an attorney to represent a ward at any subsequent proceeding.

2. Whenever there is an appeal of a decision made subsequent to a hearing on a petition requesting the appointment of a guardian or limited guardian, the responsibility of an attorney appointed pursuant to this subsection continues with respect to the appeal until the conclusion of the appeal proceedings. Upon application of the attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceedings.

G. In all cases where independent counsel is retained by or on behalf of the subject of the proceeding, the District Court shall make independent inquiry to determine whether counsel is independent and whether any conflict of interest exists which would preclude proper representation of the subject of the proceeding or which would be detrimental to the best interest of the subject of the proceeding. The District Court shall appoint other counsel where retained counsel is found not to be independent.

H. Proceedings brought pursuant to the provisions of this section shall be made a part of the record in the guardianship proceeding.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

## Library References

Indians ⇨126, 500.

Mental Health ⇨133.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 161 to 162.

**§ 5-308. Evaluations of subject of proceeding**

A. After the filing of the petition, the District Court may, on its own motion or at the request of any party to the proceeding, if the District Court determines it to be for the best interest of the ward, order an evaluation of the subject of the proceeding in connection with any proceeding pursuant to the provisions of this Code where the capacity of said person is a material issue.

B. Any evaluations made pursuant to this Code, as appropriate for the condition or alleged condition of the person being evaluated, shall be performed by:

1. A physician;
2. A psychologist;
3. A social worker with a graduate degree in social work and field training or experience in working with incapacitated or partially incapacitated persons; or
4. Other expert with knowledge of the particular incapacity or disability which the individual is alleged or has been found to have, or knowledge of the skills required to meet the essential requirements for the individual's physical health or safety or to manage that individual's financial resources.

C. An evaluation report prepared and signed by the person or persons performing the evaluation shall be submitted to the District Court prior to the hearing at which the District Court shall consider the report. The report shall include, but not be limited to:

1. A description of the nature and extent of the incapacity of the person, if any;
2. A description of the mental, emotional and physical condition of the person, his/her ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the person;
3. An opinion regarding the kind and extent of assistance, if any, required by the person;
4. An assessment and review of any services necessary to provide for the well-being of the person in the following areas:
  - a. physical health,
  - b. mental health,
  - c. social skills, and
  - d. adequate and appropriate living conditions;
5. An opinion regarding:
  - a. the probability that the extent of the incapacity, if any, of the person may significantly lessen or increase, and

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b. the type of services or treatment, if any, appropriate for the subject of the proceeding or which could facilitate improvement in the condition of the subject of the proceeding; and

6. A description of any tests or other evaluative techniques used.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 513, 518.  
Mental Health ☞142.

Westlaw Topic Nos. 209, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

**§ 5–309. Hearing on petition; setting of date**

When it is represented to the District Court in a petition filed pursuant to this act alleging that a person is an incapacitated person or partially incapacitated person, the District Court shall set a date for a hearing on the petition which date shall be no more than thirty (30) days after the filing of the petition. The District Court shall cause notice to be served pursuant to the provisions of Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 519.  
Mental Health ☞137.

Westlaw Topic Nos. 209, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

**§ 5–310. Notice of hearing**

A. The District Court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person on:

1. The subject of the proceeding; and
2. The following persons, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts:
  - a. the spouse, if any, of the subject of the proceeding,
  - b. the attorney, if any, of the subject of the proceeding,
  - c. all adult children of the subject of the proceeding,
  - d. if there is no such adult child, the then living parent or parents of the subject of the proceeding, or
  - e. if there is no such parent, all adult brothers and sisters of the subject of the proceeding and all adult grandchildren of the subject of the proceeding;
3. In case no person listed in paragraph 2 of this subsection is given notice, notice shall be given to at least one and not more than three of the nearest adult relatives of the subject of the proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;

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4. If not the petitioner, any person or organization which, in the petition, is proposed to serve as guardian or limited guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as guardian or limited guardian;

5. To the extent known to the petitioner:

a. the person or facility having care or custody of the subject of the proceeding, and

b. any department providing services to the subject of the proceeding;

6. As appropriate, the Veterans Administration;

7. Any other person as directed by the District Court.

B. A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this section.

C. Except for actions appointing a special guardian pursuant to Section 5-315 of this Title:

1. Notice shall be served personally on the individual who is the subject of the proceeding at least ten (10) days before the time set for hearing. Such personal service may be made by the attorney for the petitioner, Lighthorse, or licensed process server. The person making such services shall make proper return thereof.

2. Notice to other persons entitled to notice of a hearing on the original petition requesting the appointment of a guardian shall be mailed by regular first-class mail at least ten (10) days before the time set for the hearing. Such service by mail may be made by the District Court Clerk, Deputy District Court Clerk or attorney for the petitioner.

D. The notice to the subject of the proceeding shall set forth the date, time, place, and purpose of the hearing to which the notice refers. Such notice shall be substantially in the following form:

**NOTICE OF HEARING**

TO: \_\_\_\_\_  
(Name of subject of proceeding)

Service  
Address: \_\_\_\_\_

You are hereby notified that a petition has been filed alleging that you are an \_\_\_ incapacitated, \_\_\_ partially incapacitated person and are incapable of \_\_\_ caring for yourself, \_\_\_ managing your property. The petition requests that a \_\_\_ guardian, \_\_\_ limited guardian be appointed by the District Court to make decisions for you regarding \_\_\_\_\_ yourself, \_\_\_\_\_ your property. A copy of the petition is attached.

The hearing on the petition will be held on  
\_\_\_\_\_  
(date, time and place of the hearing)

At the hearing a ( ) guardian, ( ) limited guardian may be appointed for your ( ) person, ( ) property. The judge will explain to you the nature, purpose and effect of the proceedings. You have the right to attend the hearing. You may

confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the judge believes that an examination is necessary, the judge will order an evaluation to be done. You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and you wish to be represented by an attorney at the hearing, the District Court will appoint one for you. You may request the appointment of an attorney orally or in writing prior to the hearing or at the hearing. If you are able, you will be required to pay the cost of an attorney appointed by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Cross References**

Application for relief, notice, see Title 6, § 5–417.  
 Hearing, notice and order, see Title 6, § 5–445.  
 Copies of annual report, objections, hearing, see Title 6, § 5–416.  
 Termination of authority and responsibility of guardian, notice and hearing, see Title 6, § 5–463.

**Library References**

Indians ☞126, 519.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞127, 137.	C.J.S. Mental Health §§ 156 to 160.
Westlaw Topic Nos. 209, 257A.	

**§ 5–311. Determination by District Court; order appointing guardian; explanation on record**

A. At the hearing on the petition the District Court shall determine whether or not it is necessary to appoint a guardian of the person, property or both. If a guardian is needed, the District Court shall determine:

1. When a general or limited guardian of the person of the subject of the proceeding is requested, the essential requirements for the health and safety of the subject of the proceeding and the skills and knowledge necessary to meet those requirements;
2. When a general or limited guardian of the property of the subject of the proceeding is requested, the type and amount of the financial resources of the subject of the proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;
3. The nature and extent of the incapacity of the subject of the proceeding, if any; and
4. Whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person.

B. If after a full hearing and examination upon such petition, the District Court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person; the District Court shall appoint a guardian or limited guardian and shall issue an order appointing a guardian. The District Court shall explain on the record the facts and reasons supporting the decision not to impose any less restrictive alternatives.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 523, 526, 533.  
Mental Health ☞143, 146.

Westlaw Topic Nos. 209, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5-312. Appointment of guardians or limited guardians

A. Whenever the District Court finds the subject of the proceeding to be an incapacitated person the District Court shall appoint:

1. A general guardian of the person; and
2. As the District Court determines to be necessary and appropriate, a guardian of the property of the ward.

B. Whenever the District Court finds the subject of the proceeding to be a partially incapacitated person the District Court shall appoint, as necessary and appropriate for said person:

1. A limited guardian of the person; or
2. A general or a limited guardian of the property of said person; or
3. A limited guardian of the person and a general or limited guardian of the property of said person.

C. The District Court may appoint the same or separate persons to serve as guardian or limited guardian of the person and guardian or limited guardian of the property of a ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126.  
Mental Health ☞115.  
Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.  
C.J.S. Mental Health § 137.

§ 5-313. Order appointing guardian; specific determinations of capacity; submission of guardianship plan; other orders

A. The order appointing a guardian, based upon evidence adduced, shall set forth:

1. The determinations made by the District Court at the hearing;
2. The name and address of the individual, if any, appointed to serve as the limited guardian or guardian;
3. The specific limitations imposed upon the ward, if the ward is a partially incapacitated person;
4. Any authority granted a guardian of the person of the ward to change the place of abode of the ward outside of the Muscogee (Creek) Nation without the prior permission of the District Court; and
5. Whenever the District Court determines a review hearing is necessary or desirable, the date of the review hearing.

B. In establishing the specific limitations on the legal activities of a ward for whom a limited guardian of the person is appointed, the District Court shall make specific determinations regarding the capacity of the subject of the

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proceeding, including but not limited to determining whether the ward retains sufficient capacity:

1. To vote;
2. To serve as a juror;
3. To operate a motor vehicle;
4. To be licensed or continue to practice any profession of the ward; and
5. To make personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery, or to consent to routine or necessary medical or other professional care, treatment or advice.

C. In establishing the specific limitations on the legal abilities of a ward for whom a limited guardian of the property is appointed, the District Court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity to:

1. Appoint an agent to act on his/her behalf;
2. Enter into contracts;
3. Grant conveyances; or
4. Make gifts of property.

D. If not submitted with the petition or at the hearing, the guardian or limited guardian shall submit a guardianship plan as required by Sections 5–320 or 5–322 of this Title, or both, as appropriate and a copy of said plan shall be mailed to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5–310 of this Title. The guardianship plan as approved by the District Court shall be made a part of the order of the District Court. Said plan may be modified as provided by this act.

E. The District Court may, in its discretion, make such further orders as the District Court deems necessary for the best interest of the ward for care of the ward and maintenance or management of the ward's property, including but not limited to:

1. Order the guardian of the property of the ward to provide the ward from such property with specified amounts of money, monthly, or from time to time, which the ward may dispose of as the ward shall determine and for which, other than a showing of the amounts paid to the ward, the guardian will not be required to account. Such order may be modified upon application of the guardian or any interested person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5–310 of this Title and shall be given as provided in Section 5–310 of this Title; and
2. The amount of the bond as required by Section 5–406 of this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### **Cross References**

Power of guardian, report of change of ward's abode, see Title 6, § 5–119.

**Library References**

Indians ☞126, 523, 526, 533.  
Mental Health ☞146.1.

Westlaw Topic Nos. 209, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

**§ 5-314. Assignment of powers to limited guardian; endorsement of limitation or specification of assets upon letters of guardianship**

A. The District Court may assign to a limited guardian of the person any portion of the powers and duties of a general guardian of the person except the power to take custody of the person of the ward. The District Court may also assign to the limited guardian the duty to assist the ward in those particular areas in which the capacity of the ward is impaired including, but not limited to, the duty to assist the ward in:

1. Meeting the requirements for his/her health or safety;
2. Protecting his/her rights;
3. Obtaining necessary services;
4. Fulfilling his/her civic duties; and
5. Any other areas as determined necessary by the District Court and which are not specifically prohibited.

B. An order specifying that only part of the property or estate of a ward is under the control or management of the guardian creates a limited guardianship of the property.

1. The District Court may assign to a limited guardian of property any of the duties and powers of a general guardian of the property regarding the management of financial resources which the partially incapacitated person lacks the capacity to perform; or

2. The District Court may assign to a limited guardian of property the duty of assisting the ward to perform any of such functions with regard to any financial resource of the ward.

C. If the District Court limits any power conferred on the guardian of property or specifies that management of some but not all assets of the ward be placed under the control of a guardian of the property, the limitation or specification of assets subject to the guardianship must be endorsed upon the letters of guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126.  
Mental Health ☞179, 216.  
Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.  
C.J.S. Mental Health §§ 176 to 179, 185, 191 to 192, 194.

**§ 5-315. Appointment of special guardian; powers; duration; bond; removal**

A. The District Court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

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2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

C. The District Court may appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceeding who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:

1. The subject of the proceeding;
2. The attorney of the subject of the proceeding, if any;
3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and

4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the District Court. Notice shall be personally served in the manner as the District Court directs on the subject of the proceeding and on other persons receiving notice as directed by the District Court.

D. The District Court may without notice appoint a special guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever a special guardian is immediately appointed as provided by this subsection, the District Court shall cause a copy of the petition, order and letters of special guardianship to be served on;

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and

3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the District Court. The notice shall be served in the manner the District Court directs.

E. The District Court shall grant the special guardian only those powers necessary to act with respect to the particular emergency, as determined by the District Court. The special guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the District Court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the District Court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The District

Court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. The letters for a special guardian shall state that the person is a special guardian, the date of the expiration of the special guardianship, and the specific power or powers of the special guardian.

F. The appointment of a special guardian shall be effective from the date of appointment until a guardian is appointed pursuant to Section 5–112 of this Title, or for thirty (30) days, whichever is less.

G. The District Court shall not require bond if the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.

H. The authority of any guardian or limited guardian previously appointed by the District Court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

I. The District Court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken during the special guardianship and shall make any other report the District Court requires. [Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Cross References

Special guardians, see Title 6, § 5–110.

#### Library References

Indians ☞126, 519, 533.

Mental Health ☞104, 133.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 128 to 133, 161 to

162.

### § 5–316. Proceedings to determine restoration to capacity

A. Any person who has been judicially determined to be an incapacitated or partially incapacitated person, the guardian or limited guardian, any relative of the ward or any friend of the ward may apply by petition to the District Court to have the fact of the ward's restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is no longer incapacitated or partially incapacitated.

B. Upon receiving the petition, the District Court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The District Court shall cause notice to be served as provided by Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner. At the hearing, the guardian or relative of the petitioner, and in the discretion of the District Court, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the Judge on his/her own motion. If it is found that the petitioner is no longer incapacitated or partially incapacitated and capable of taking care of himself or his/her property, or both, his/her restoration to capacity shall be adjudged, and the guardianship of such person shall cease.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 519, 520.

Mental Health ☞168.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 180 to 182.

**§ 5–317. Presumption of capacity when guardian discharged without appointment of another**

Whenever a guardian or limited guardian who has been appointed for an incapacitated or partially incapacitated person has been discharged by the final order of a District Court having jurisdiction thereof, and no other guardian has been appointed for said person by a District Court of competent jurisdiction, the person for whom said guardian had been appointed shall be presumed to be fully restored and shall be presumed to be fully capable and competent to make contracts and transact any and all business as though said person had never been declared to be incapacitated or partially incapacitated.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 520(2).

Mental Health ☞168, 178.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 174 to 175, 180 to 182.

**§ 5–318. Duties and powers of guardian or limited guardian**

A. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care or control of the ward pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code, and the orders of the District Court, and the guardianship plan approved by the District Court and shall perform diligently and in good faith any specific duties and powers assigned by the District Court.

B.1. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall:

a. become or remain sufficiently acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the ward;

b. assure that the ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his/her health or safety; and

c. provide any required consents or approvals on behalf of the ward as authorized by the District Court.

2. A guardian or limited guardian of the person, if consistent with the terms of an order of the District Court, may:

a. if no guardian of the property or conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward; and

b. consent to routine or necessary medical or other professional care, treatment or advice for the ward without liability by reason of the consent for

injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances.

C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Indians ☞126.

Mental Health ☞179.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 176 to 179.

### § 5-319. Limitation of powers of guardian

A guardian shall have no powers except as provided by the Muscogee (Creek) Nation Code of Laws or given to such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures from the ward, except:

a. with specific authorization of the District Court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment,

b. as authorized by an advance directive executed pursuant to the applicable law, or

c. as authorized by consent not to resuscitate made pursuant to applicable law;

2. No guardian or District Court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward;

3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the District Court;

4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the District Court; and

5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed absent formal commitment proceedings in which the ward has independent counsel.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇨126.

Mental Health ⇨179.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 176 to 179.

§ 5-320. Proposed plan for care and treatment of ward

A. If not filed with the petition or submitted to the District Court at the time of the hearing, within ten (10) days after his/her appointment the guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file with the District Court, for its approval, a proposed plan for the care and treatment of the ward and shall submit subsequent or modified plans as required by this title. Upon the application of the guardian or limited guardian, the District Court may extend the time for filing the plan for not more than thirty (30) days. The District Court may approve a plan acceptable to the District Court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B.1. The proposed guardianship plan and any subsequent guardianship plans for the care and treatment of the ward shall state:

a. the services which are necessary to meet the essential requirements for the physical health or safety of the ward taking into account the contents and recommendations of an evaluation report made with respect to the ward, if any;

b. the means for obtaining those services;

c. the manner in which the guardian or limited guardian, the ward, and the guardian of the property of the ward or the conservator, or if an organization or another person has been appointed to serve in that capacity, will exercise and share decision-making authority; and

d. such other services necessary to assist in fulfilling the needs of the ward, the terms of the most recent dispositional order applying to such guardian or limited guardian, and the duties of such guardian or limited guardian.

2. Each such plan shall be substantially in the following form:

Plan for the Care and Treatment of a Ward

I, \_\_\_\_\_, the (guardian, limited guardian) for (Name)

(Name and the current place of abode of the ward)

hereby submit this (initial, annual or as ordered by the District Court) Guardianship Plan for the care and treatment of said ward.

1. I believe the services necessary for the physical health and safety of the ward are:

2. Those services will be obtained or provided as follows:

3. The guardian (or conservator) of the property (Name or indicate as not applicable) of the ward, the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the disposi-

tional order as follows:

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4. I believe the following services will assist in fulfilling the needs of the ward, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian):

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(date) (Signature of guardian or limited guardian)

C. If ordered by the District Court, the plan for the care and treatment of the ward shall be prepared with the assistance of any person designated by the District Court to provide such assistance.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Cross References

Report on guardianship, requirements, see Title 6, § 5-414.

#### Library References

Indians ⇨126, 533.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

Mental Health ⇨179.

C.J.S. Mental Health §§ 176 to 179.

Westlaw Topic Nos. 209, 257A.

### § 5-321. Disposition of financial resources under supervision and control of guardian or limited guardian; petition for restoration of capacity

A. A guardian of the property must keep safe the property of his/her ward and shall act as a fiduciary as provided by Section 5-121 of this Title. Subject to the order and the guardianship plan for the management of the financial resources of the ward, a guardian or limited guardian of the property of the ward:

1. Shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his/her supervision and control to assure that:

a. the essential requirements for the physical health or safety of the ward are met,

b. the property rights of the ward are protected,

c. the financial resources of the ward which are subject to the guardianship are prudently managed, and

d. the guardian or limited guardian of the person of the ward, if any, or if other than the guardian or limited guardian of the property, is able to perform the duties and powers assigned by the District Court;

2. May expend funds of the estate for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support;

3. May, subject to prior specific approval by the District Court, make gifts to charity, persons, which may include the guardian or limited guardian, or both such charity and persons, as the ward might have been expected to make, based

upon an established pattern of giving made by the ward prior to the appointment of a guardian or limited guardian or if the District Court finds it is in the best interest of the subject of the proceeding on the basis of tax or estate planning. The District Court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the person or persons to whom such gifts can be made, which may include guardians or limited guardians.

B. Limited guardians of property shall consider the size of the financial resources of the ward which have not been placed under their supervision or control.

C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian of the property shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞126, 141.

Mental Health ☞168, 217.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 36, 46 to 50, 53.

C.J.S. Mental Health §§ 180 to 182, 203, 206 to 207.

**§ 5–322. Proposed plan for management of financial resources of ward**

A. If not filed with the petition or submitted to the District Court at the time of the hearing, within two (2) months after his/her appointment, a guardian or limited guardian of the property of an incapacitated or partially incapacitated person shall file with the District Court for its approval a proposed plan for the management of the financial resources of the ward that are under his/her management or administration, and an inventory as required pursuant to Section 5–411 of this Title. Said guardian or limited guardian shall submit subsequent or modified plans as required by this Title.

B. Initial and subsequent guardianship plans for the management of the financial resources of the ward shall state:

1. The services which are necessary to manage the property of the ward placed under the control of the guardian or limited guardian;
2. The means for obtaining those services;
3. The manner in which the guardian or limited guardian of the property of the ward, the ward, and the guardian or limited guardian of the person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;
4. Such other services necessary to assist in the management of the property placed under the guardian or limited guardian in fulfilling the needs of the ward and the duties of such guardian or limited guardian, and the terms of the most recent dispositional order.

C. Each such plan shall be substantially in the following form:

Plan for the Management of the Property of the Ward

I, \_\_\_\_\_, the petitioner, guardian or limited (Name) guardian for

(Name and current place of abode)

hereby submit this (initial, annual or as ordered by the District Court) Guardianship Plan.

1. I believe the services necessary to manage the property of the ward which is subject to this Plan are as follows:

\_\_\_\_\_

2. Those services will be provided in the following manner: \_\_\_\_\_

3. The guardian (or limited guardian) of the person, (Name, or indicate as not applicable) the ward and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows: \_\_\_\_\_

4. I believe the following services will assist in the management of the property of the ward subject to my control, implementing the terms of the most recent dispositional order applying to me as guardian or limited guardian of the property: \_\_\_\_\_

\_\_\_\_\_

Date (Signature of guardian or limited guardian)

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Cross References

Guardianship or limited guardianship of property, report, see Title 6, § 5-415.

Library References

Indians ¶126, 141. C.J.S. Indians §§ 36, 46 to 50, 53.
Mental Health ¶217. C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 209, 257A.

§ 5-323. Sale or lease of homestead of incapacitated or partially incapacitated person

Guardians of incapacitated and partially incapacitated persons are authorized and empowered subject to the dispositional order and the guardianship plan to sell and convey all or part of the homestead of the incapacitated or partially incapacitated person, and to lease all or part of the homestead of the incapacitated or partially incapacitated person for oil, gas, and other mineral exploration, development and production purposes and for agricultural purposes.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

## Title 6, § 5–323

## GUARDIAN AND WARD

### Library References

Indians ☞126, 172.

Mental Health ☞258.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 37 to 38, 46 to 50, 53, 96 to 97, 101 to 108, 110 to 111, 128.

### § 5–324. Sale or lease of real property by guardian; approval; joinder of spouse

When the ward owns an interest in a tract of real property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by Section 5–323 of this Title shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an incapacitated or partially incapacitated person, be approved by the District Court in which the guardianship proceeding is pending, and the spouse of the ward be a party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof, but when the ward owns no interest in a tract of real property other than a homestead interest or possible homestead interest, a guardian may execute a conveyance thereof on behalf of the ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the District Court in which such proceeding is pending, made pursuant to application and notice sent by ordinary mail to the persons set forth in Section 5–310 of this Title at least ten (10) days prior to the hearing of such application.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Library References

Indians ☞172, 176.

Mental Health ☞258.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 37 to 38, 96 to 97, 101 to 111, 128.

### § 5–325. Application; Sections 5–323 and 5–324 cumulative

Sections 5–323 and 5–324 of this Title apply only to the homestead and are cumulative and in addition to any such procedures now provided or permissible under existing laws.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### § 5–326. Estates of incapacitated or partially incapacitated persons not exceeding \$10,000.00; disposition; discharge and release

A. When the whole estate of an adult who has been adjudicated to be incapacitated or partially incapacitated does not exceed the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the District Court, or, if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the District Court. The person receiving such property shall hold and dispose of the same in such manner as the District Court directs.

B. The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by the District Court under this

section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the incapacitated or partially incapacitated person, and he is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or Guardian Ad Litem may be discharged and released as provided for in the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Indians ☞126, 141, 533.	C.J.S. Indians §§ 36, 46 to 50, 53, 151 to 179.
Mental Health ☞211.	C.J.S. Mental Health § 183.
Westlaw Topic Nos. 209, 257A.	

### SUBCHAPTER 4. MISCELLANEOUS

#### Section

- 5-401. Appointment as guardian of more than five wards prohibited; exceptions.
- 5-402. Violations; punishment.
- 5-403. Disqualification by financial relations with the Judge of the District Court; removal of ineligible guardians; liability for continuing to act; removal of the Judge.
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### Section

- 5-428. Bond of guardian of nonresident.
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- 5-436. Management of estate; income applied for support of ward; sale of realty.
- 5-437. Maintenance and support of ward; credit on settlement; payment of third person furnishing necessaries on guardian's refusal.
- 5-438. Execution of waivers or consents for wards.
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- 5-453. Sale bond by guardian.
- 5-454. Sales governed by same law as in estates of decedents.
- 5-455. Order in force for one year only.
- 5-456. Terms of sale; security.
- 5-457. Limitation of action for recovery of estate sold; disability and removal thereof.
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- 5-459. Sale of perishable property; report; good faith determination of perish ability.
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- 5-461. Removal of guardians.
- 5-462. Suspension of power of guardian; marriage of incapacitated or partially incapacitated person.
- 5-463. Termination of authority and responsibility of guardian; removal; resignation; final account; notice and hearing.
- 5-464. Termination of guardianship when unnecessary.
- 5-465. Civil liability of guardians or petitioners; damages.
- 5-466. Citation for concealment or embezzlement.
- 5-467. Reporting of abuse, neglect, or exploitation; violation and penalty; civil liability.

### **§ 5-401. Appointment as guardian of more than five wards prohibited; exceptions**

No person shall be appointed guardian of any minor or incapacitated or partially incapacitated person, who is, at the time of the hearing of the application for appointment, the guardian of as many as five persons, other than his/her own family or relatives. The provisions of this section and Section 5-402 of this Title shall not apply to boards of control and directors of eleemosynary or charitable institutions, under the control and charge of the

Muscogee (Creek) Nation, where under the law such boards of control and directors may be appointed as guardians of the estates, or of the persons, of those committed to their charge or safekeeping. The provisions of this section shall not prohibit the appointment of officers or managers of fraternal or benevolent orders or homes and church orphanages as to inmates of such institutions.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ⇌10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ⇌126, 133.	C.J.S. Indians §§ 46 to 50, 53, 150.
Mental Health ⇌116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–402. Violations; punishment

Any person or official violating the provisions of Section 5–401 of this Title shall be guilty of a misdemeanor and punished in accordance with Title 14.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### § 5–403. Disqualification by financial relations with the Judge of the District Court; removal of ineligible guardians; liability for continuing to act; removal of the Judge

No natural person shall be eligible to act as guardian of an estate under the jurisdiction of the Judge of the District Court, if said Judge of the District Court is under any financial obligation whatsoever to such person or such person is under financial obligation to the Judge. If the Judge of the District Court, while holding the office of judge of the District Court, becomes pecuniarily liable to any guardian of any minor or incapacitated or partially incapacitated person, such liability shall operate to disqualify such guardian. It is hereby made the duty of the Judge of the District Court to enter on the District Court docket such disqualifying conditions. Persons who have heretofore been appointed guardians, who are not eligible to act under this section, shall be by the Judge of the District Court removed and successors appointed, as provided by law. If any person not eligible to act under this section continues to act as guardian, after such ineligibility has been legally determined, such person and the surety upon his/her bond shall be liable to the estate of the minor or incapacitated or partially incapacitated person for all money unlawfully paid by such ineligible guardian out of the estate of such minor or incapacitated or partially incapacitated person, and if the Judge of the District Court knowingly permits an ineligible person to act, he shall be removed from office.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ⇌10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Judges ⇌42.	C.J.S. Judges §§ 267, 269 to 276, 278 to 280.
Mental Health ⇌116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 227, 257A.	

**§ 5-404. Eligibility of nonresidents; foreign trust companies or institutions; domestic corporations or trust companies**

No person who has not been a resident, in good faith, of the Muscogee (Creek) Nation for one (1) year past shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the District Court, and no foreign trust company or institution shall be appointed guardian of the property or person of any minor or an incapacitated or partially incapacitated person by the District Court. Provided that this shall not prevent one from being appointed guardian of his/her own spouse, child, children, grandchild, grandchildren, parent, grandparent, brother, sister, aunt, uncle, niece or nephew even though he be a nonresident. No domestic corporation or trust company shall be appointed or qualify as guardian of a minor or incapacitated or partially incapacitated person unless such company is at the time a resident of and maintains its usual place of business in the boundaries of the Muscogee (Creek) Nation. Such a domestic corporation or a natural person not a resident of the Muscogee (Creek) Nation may be appointed as such guardian upon the written request in a will or otherwise of a person eligible to make such nomination pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-405. Inquiry into suitability of person proposed to serve as guardian**

A. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the District Court shall determine if:

1. The person proposed to serve as guardian is a minor or an incapacitated or partially incapacitated person;
2. The person proposed to serve as guardian is a convicted felon;
3. The person proposed to serve as guardian is insolvent or has declared bankruptcy during five (5) years prior to the filing of the pleading proposing such person to serve as guardian;
4. The person proposed to serve as guardian or is under any financial obligation to the ward; or
5. There exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.

B. No minor or incapacitated person shall be appointed guardian of an incapacitated or partially incapacitated person.

C. If the person proposed to serve is a convicted felon, the District Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The District Court shall appoint such person proposed to serve only upon determining that the facts underlying the conviction

tion do not give rise to a reasonable belief that that person proposed to serve will be unfaithful to or neglectful of his/her fiduciary responsibilities, and that the appointment is in the best interest of the ward.

D. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the District Court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall have no effect on the qualification of a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.

E. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is under any financial obligation to the ward, the District Court shall make further inquiry into the nature and extent of such obligation. The District Court shall appoint the person proposed to serve only after a determination that such obligation will not impair the ability of the person proposed to serve to discharge his/her fiduciary responsibilities, and that the appointment is in the best interest of the ward. Being under financial obligation to the ward shall have no effect on the qualification of a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.

F. A current or potential conflict of interest which is not substantial and not likely to preclude or impair the ability of a person proposed to serve as a guardian acting in the best interest of his/her ward shall not, by itself, disqualify such person from appointment.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126, 133.	C.J.S. Indians §§ 46 to 50, 53, 150.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5-406. Guardian's bond

A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the District Court may require the person or organization to be appointed to provide a bond to this Nation, with sufficient sureties, to be approved by the District Court, and in such penal sum as the District Court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B.1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the District Court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the

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District Court at the hearing on the petition, to this Nation, with sufficient sureties, to be approved by the District Court, and in such penal sum as the District Court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the District Court that:

a. the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than forty thousand dollars (\$40,000.00); and

b. the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward, the District Court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans' Guardianship Act and 72 O.S. § 126.1 et seq.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the District Court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞15.  
Indians ☞126.  
Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.  
C.J.S. Guardian and Ward § 10.  
C.J.S. Indians §§ 46 to 50, 53.

**§ 5–407. Request for security or bond; suspension of powers; order**

When a petition is presented praying that a guardian be required to give further security, or to give bond where, by order of the District Court no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the ward or his/her estate, the Judge may, by order, suspend his/her powers until the matter can be heard and determined. If the Judge determines a bond or other security is in the best interests of the ward or his/her estate, the Judge shall order the same to be posted, and if it is not given within a reasonable time, to be fixed by the Judge, the guardian shall be removed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞15.  
Indians ☞126.  
Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.  
C.J.S. Guardian and Ward § 10.  
C.J.S. Indians §§ 46 to 50, 53.

**§ 5-408. Requirement of new bonds; discharge of sureties on old bond**

The District Court may require a new bond to be given by a guardian whenever the District Court deems it necessary, and may discharge the existing sureties from further liability, after due notice is given as the District Court may direct, when it shall appear that no injury can result there from to those interested in the estate.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞15.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward § 10.
Mental Health ☞166.	C.J.S. Indians §§ 46 to 50, 53.

**§ 5-409. Preservation of bonds; breach of condition; actions on bonds**

Every bond given by a guardian must be filed and preserved by the District Court Clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the person or estate of the ward. Any interest earned during the preservation of a bond shall be distributed to the ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞15.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward § 10.
Mental Health ☞166.	C.J.S. Indians §§ 46 to 50, 53.

**§ 5-410. Limitation of action on bond; effect of disability**

No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three (3) years from the discharge or removal of the guardian; but if at the time of such discharge a person entitled to bring such action is under any legal disability to sue, the action may be commenced by such person at any time within three (3) years after such disability is removed.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞182.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞508.	C.J.S. Guardian and Ward §§ 297 to 307.
Mental Health ☞478.	C.J.S. Indians §§ 151 to 179.

**§ 5-411. Inventory and account of estate of ward; appraisal; waiver of inventory prohibited**

A. Every guardian or limited guardian of the property of a ward shall file an inventory of the estate of his/her ward within two (2) months after his/her appointment. The time to file an inventory may be extended by the District Court for good cause shown. The District Court may, upon application made for that purpose by any interested person, compel the guardian or limited guardian of the property of a ward to render a revised inventory or account to

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the District Court of the estate of his/her ward. Each inventory and account returned or rendered must be sworn to by the guardian or limited guardian.

B. The guardian shall state his/her opinion of the value of the estate of the ward described in the first inventory. Such inventory shall be filed with the District Court Clerk. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his/her benefit, like proceedings must be had for the return thereof. If requested by the ward, Judge or any interested person, such property must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estate of decedents.

C. The District Court shall not waive any inventory of property of the ward which is required by this section.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### Cross References

Proposed plan for management of financial resources of ward, see Title 6, § 5–322.

### Library References

Guardian and Ward ⇨143.

Indians ⇨126.

Mental Health ⇨299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

## § 5–412. Settlement and allowance of accounts; reports to District Court; accounting information; date certain for next annual report

A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the District Court for settlement and allowance as part of the guardianship report as required by Section 5–416 of this Title.

B.1. In addition, a guardian or limited guardian of the property shall:

a. present accounts whenever the District Court requires that such report or accounts be presented, and

b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 5–411 of this Title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the District Court or required by the Uniform Veteran's Guardianship Act (72 O.S. § 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than forty thousand dollars (\$40,000.00) if a bond has been posted, or are worth less than ten thousand dollars (\$10,000.00) regardless of whether or not a bond has been

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posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. Unless waived at the discretion of the District Court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 5-415 of this Title.

1. Unless waived at the discretion of the District Court, or not required by Title 6 of the Muscogee (Creek) Nation Code, a guardian of the person of a minor ward shall file such reports of the guardianship of the person of the ward as required by the District Court in such form as the District Court may require.

2. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 5-416 of this Title.

E. The District Court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. Any accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the District Court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

### Library References

Guardian and Ward ☞143.

Indians ☞126.

Mental Health ☞299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

§ 5-413. Account by one of joint guardians

When an account is rendered by two (2) or more joint guardians, the Judge of the District Court may allow the same upon oath of any of them.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

- Guardian and Ward ⚖️143. C.J.S. Guardian and Ward § 226.
- Indians ⚖️126. C.J.S. Indians §§ 46 to 50, 53.
- Mental Health ⚖️299. C.J.S. Mental Health § 214.
- Westlaw Topic Nos. 196, 209, 257A.

§ 5-414. Report on guardianship of person; requirements; attachments

A. A report on the guardianship of the person of an incapacitated or partially incapacitated person shall set forth:

1. The name and place of abode of the ward and the name and address of the guardian or limited guardian;
2. Any significant change in the capacity of the ward to meet the essential requirements for his/her physical health or safety;
3. The services being provided to the ward and the relationship of those services to the individual guardianship plan;
4. Any significant actions taken by the guardian or limited guardian or guardian during the reporting period;
5. Any significant problems relating to the guardianship which have arisen during the reporting period;
6. The reasons, if any, why the appointment should be continued; and
7. The reasons, if any, why no less restrictive alternative will permit the incapacitated or partially incapacitated person to meet the essential requirements for his/her physical health or safety.

B. The report shall be substantially in the following form:

Report on the Guardianship of the Person

I, \_\_\_\_\_ (Name) the (Guardian/Limited Guardian of the person) for \_\_\_\_\_ (Name), an incapacitated/partially incapacitated person hereby submit this (annual, District Court-ordered) Guardianship Report.

1. The present place of abode of the ward is: \_\_\_\_\_
2. The type of home or facility in which the ward lives is \_\_\_\_\_ and the name of the person in charge of the home or facility is \_\_\_\_\_
3. My present street address and telephone number is: \_\_\_\_\_
4. During the last year, I have seen the ward \_\_\_\_\_ times. I otherwise or also have become or remained familiar with the needs and care of the ward as follows: \_\_\_\_\_

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The nature of my visits to the ward have been: \_\_\_\_\_

5. The following services are currently being provided to the ward:

6. These services (are, are not) provided for in the current Guardianship Plan. The reason they are not shown in the current Guardianship Plan is:

7. The ward was last seen by a physician on: The purpose of the visit was:

8. I (have, have not) observed any major change in the ward’s physical or mental condition during the last year. (If so, these are my observations: \_\_\_\_\_)

9. I (have, have not) taken any significant action for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so, I took the following actions: \_\_\_\_\_)

10. There (have, have not) been any significant problems relating to the ward or to my guardianship of the ward since the last time I submitted a Guardianship Report or, if this is an initial report, since the issuance of my letters. (If so, I have observed these problems: \_\_\_\_\_)

11. It is my opinion that the guardianship (should, should not) be continued. (If so, the basis for my belief is as follows: \_\_\_\_\_)

12. I believe the ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restrictions on the ward’s ability to act for himself or herself. (If so, the basis for my belief is as follows: \_\_\_\_\_)

13. My opinion of the present care being provided to the ward is as follows: \_\_\_\_\_

14. The place of abode of the ward (has, has not) changed since the last guardianship report. (If so,) the place of abode of the ward was changed for the following reasons: \_\_\_\_\_

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_

(Signature of Guardian or Limited Guardian)

Telephone: \_\_\_\_\_

C. Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan, substantially in the same form as provided in Section 5-320 of this Title, shall be submitted with the guardian-

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ship report and shall show any such changes or proposed changes in the guardianship plan since last submitted to and approved by the District Court.

D. Attached to the report shall be:

- 1. An accounting of any monies received by the guardian or limited guardian on behalf of the ward;
- 2. Any expenditure made by the limited guardian or guardian on behalf of the ward;
- 3. Any compensation requested by the guardian or limited guardian; and
- 4. Copies of any appropriate medical records, evaluations, or other similar documentation pertinent to the reporting period.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞143.	C.J.S. Guardian and Ward § 226.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞299.	C.J.S. Mental Health § 214.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-415. Report on guardianship or limited guardianship of property; requirements; attachments; review of financial resources**

A. A report on the guardianship or limited guardianship of the property of a ward shall set forth:

- 1. The name and place of abode of the ward, and the name and address of the guardian or limited guardian;
- 2. If the ward is an incapacitated or partially incapacitated person, significant changes in the capacity of the ward to manage his/her financial resources and the services being provided to the ward and the relationship of those services to the individual guardianship plan—for the management of financial resources;
- 3. Any significant actions taken by the guardian or limited guardian during the reporting period;
- 4. Any significant problems relating to the guardianship which have arisen during the reporting period; and
- 5. If the ward is an incapacitated or partially incapacitated person, the reasons, if any, why the guardianship should not be terminated, or why no less restrictive alternatives would permit the ward to manage his/her financial resources.

B. If the ward is an incapacitated or partially incapacitated person, reports on the guardianship of the property shall be substantially in the following form:

**Report on the Guardianship of Property**

I, \_\_\_\_\_ (name) the (Guardian or Limited Guardian of the property) of \_\_\_\_\_ (Name) an incapacitated (or a partially incapacitated) person, hereby submit this (annual, District Court-ordered) Report.

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1. List any significant changes in the capacity of the ward to manage his/her or her financial resources:

\_\_\_\_\_

2. The services currently being provided to the ward are as follows: \_\_\_\_\_

3. These services (are, are not) provided for in the current Guardianship Plan as approved by the District Court. The reasons these services are not shown in the current plan are as follows: \_\_\_\_\_

\_\_\_\_\_

4. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so) These actions are as follows: \_\_\_\_\_

\_\_\_\_\_

5. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report. (If so) The problems are as follows: \_\_\_\_\_

\_\_\_\_\_

6. In my opinion, the guardianship (should, should not) be continued. The reasons for my belief are as follows:

\_\_\_\_\_

7. It is my belief that the ward (would, would not) be able to manage his/her or her financial resources with fewer restrictions on the ward's ability to act for him or herself. The reasons for my belief are as follows: \_\_\_\_\_

\_\_\_\_\_

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(date of report)

(Signature of Guardian or Limited Guardian)

C. If the ward is a minor, reports on the guardianship of the property shall be substantially in the following form:

I, \_\_\_\_\_ (name) the (Guardian or Limited Guardian of the property) of \_\_\_\_\_ (name), a minor, hereby submit this (annual, District Court-ordered) Report.

1. The services currently being provided to the ward are as follows: \_\_\_\_\_

\_\_\_\_\_

2. These services (are, are not) provided for in the current Guardianship Plan as approved by the District Court. The reasons these services are not shown in the current plan are as follows: \_\_\_\_\_

\_\_\_\_\_

3. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so) These actions are as follows: \_\_\_\_\_

4. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report. (If so) The problems are as follows: \_\_\_\_\_  
w6d

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration. \_\_\_\_\_

(date of report)

(Signature of Guardian or Limited Guardian)

D. Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan for the management of financial resources, substantially in the same form as provided in Section 5–322 of this Title, shall be submitted with the guardianship report and shall show any such changes or proposed changes in the guardianship plan since last submitted and approved by the District Court.

E. The report:

1. Shall contain a complete financial statement of the financial resources of the ward under the control or supervision of the guardian or limited guardian of the property;

2. Shall contain an accounting of any receipts and disbursements received, or expenditures made by the guardian or limited guardian on behalf of the ward;

3. May include any request for compensation for the guardian; and

4. May include any compensation request for the attorney for the ward.

F. As directed by the District Court, following submission of a report or in conjunction with an initial or annual review or any subsequent proceeding, a guardian or limited guardian shall submit to an actual review of the financial resources placed under his/her control.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Cross References**

Definitions, general provisions, see Title 6, § 5–111.

**Library References**

Guardian and Ward ☞143.

Indians ☞126.

Mental Health ☞299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

**§ 5-416. Mailing of copies of annual report; objections to report; hearing; order granting immediate relief; order for compensation; new bond; appointment of counsel to represent ward**

A.1. Upon the filing of an annual report the District Court shall immediately cause a copy of the report to be mailed by first-class mail to:

- a. the persons entitled to notice pursuant to Section 5-201 of this Title for minors, or
- b. those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title for adults, and
- c. the attorney of the ward, if any.

2. Attached to the copy of the report shall be a statement notifying the person receiving copies of said reports that any objection to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the District Court.

3. Any person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after the filing of the annual report with the District Court.

B. 1. After notice, the District Court may on its own motion hold a hearing on an annual report and shall hold a hearing:

- a. upon the filing of an objection to the annual report; or
- b. when the District Court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the persons entitled to notice pursuant to Section 5-201 of this Title for minors or paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title for adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the District Court may direct and shall be sent by regular first-class mail.

C. The District Court may enter an order granting the relief requested in the report without notice if the District Court determines that such relief should be granted immediately. In that event, the District Court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this section, the District Court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the guardian, the guardian's attorney, and any other person entitled to compensation from the property of the ward shall be determined by the District Court in the manner required by the provisions of the Muscogee (Creek) Nation Guardianship Code. Such order, whether issued at the expiration of the fifteen (15) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all persons given copies of the annual report or notice of such hearing,

except with regard to any such person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect to the guardian except with respect to challenge by the ward upon the removal of the ward's legal disability.

F. With regard to an annual report of a guardian of the property of a ward, the District Court shall examine the changes, if any, to the property of the ward as set forth in the report. If the guardian was required to submit a bond, and if the total value of the ward's property which is subject to the proceeding differs significantly from the total value of the ward's property as last disclosed to the District Court;

1. The District Court shall direct such guardian to obtain a new bond of such lesser or greater penal amount as will adequately protect the ward's property which is subject to the proceeding;

2. Such new bond shall be filed with the District Court clerk within thirty (30) days following the date of the order; and

3. If the District Court requires a new bond of a greater penal amount than the bond previously submitted, failure of the guardian to submit such new bond within the thirty-day period set forth in this subsection shall constitute grounds for removal of such guardian or limited guardian.

G. At any hearing held upon an annual report:

1. If required by the District Court, the guardian or limited guardian shall be present;

2. The District Court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the District Court deems appropriate; and

3. The District Court may make any order which the District Court deems to be in the best interest of the ward or the estate of the ward. The District Court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the District Court deems should be considered in the best interest of the ward or the estate of the ward. Subject to appeal or vacation within the time permitted, an order entered after the hearing of an annual report after notice adjudicates as to liabilities concerning the matters considered in connection with said hearing.

H. At a hearing upon an annual report the District Court may appoint an attorney to represent the ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in this act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the District Court of an order pertaining to the matters considered at such hearing, unless the District Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

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2. Unless an appeal is taken from the order of the District Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition of the appeal or as otherwise ordered by the District Court; or

3. Upon application of said attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

### Cross References

Definitions, general provisions, see Title 6, § 5-111.

### Library References

Guardian and Ward ⚡143.

Indians ⚡126.

Mental Health ⚡299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

### **§ 5-417. Application for relief; notice; hearing; order; appointment of counsel to represent ward; joinder of separate applications or objections; evaluation of ward; hearing without notice**

A. After the appointment of a guardian, the ward, any person interested in the welfare of the ward, or a guardian may make application to the District Court for:

1. Termination of the guardianship;
2. Removal of the guardian;
3. Resolution of a dispute pertaining to the guardianship plan;
4. If the ward is an incapacitated or partially incapacitated person, the imposition of additional restrictions upon the legal capacity of the ward to act on his/her own behalf or the removal of one or more existing restrictions; or
5. A review hearing.

B. Such application shall set forth:

1. The names and addresses of the individuals and entities entitled to notice;
2. The relief requested; and
3. The alleged facts and reasons supporting the request.

C. Any person entitled to notice of the hearing on an application filed pursuant to this section may object to the relief requested in the application. If the ward is a minor, notice shall be as provided by Section 5-201 of this Title. If the ward is an incapacitated or partially incapacitated person, notice shall be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title and shall be given as provided by Section 5-310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner.

D. The District Court shall set an application filed pursuant to this section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such

date. However, except for an order terminating a guardianship, the District Court may enter an order granting the relief requested in the application without notice if the District Court determines that such relief should be granted immediately. In that event, the District Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the Judge may continue, modify or vacate his/her temporary order.

E. At the hearing held upon an application filed pursuant to this section for which notice is required, the District Court may, based upon the evidence adduced, enter an order granting or denying the relief requested. At such hearing, the District Court also may make any other order which the District Court deems to be in the best interests of the ward or the estate of the ward. The District Court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the District Court deems should be considered in the best interest of the ward or the estate of the ward.

F. With respect to any matter set for hearing pursuant to this section, the District Court may appoint an attorney to represent at such hearing a ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in the Muscogee (Creek) Nation Guardianship Code for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the District Court of an order pertaining to the matters considered at such hearing, unless the District Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. Unless an appeal is taken from the order of the District Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition or as otherwise ordered by the District Court; or
3. Upon application of said attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

G. After notice, the District Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the District Court determines joinder would be prejudicial to the interests of the ward.

H. As necessary and appropriate the District Court may order an evaluation of the ward in connection with any guardianship proceeding subsequent to the appointment of a guardian.

I. The District Court may hear an application other than with respect to the matters set forth in subsection A of this section, with or without notice as the District Court determines. If the District Court requires notice to be given, the

District Court shall specify the persons to whom notice shall be given and the manner and time in which such notice shall be given.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ⇨18, 25.	C.J.S. Guardian and Ward §§ 23, 45 to 48, 50.
Indians ⇨126, 519, 533.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ⇨167 to 174.	C.J.S. Mental Health §§ 167 to 173, 180 to 182.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5–418. Expenses and compensation of guardians

A. Every guardian must be allowed the amount of his/her reasonable expenses in the execution of his/her trust, and he must also have such compensation for his/her services as the District Court deems just and reasonable.

B. To the extent that the services of a guardian or limited guardian of the property are for the collection of income of the ward, compensation for such services shall not exceed seven and one-half percent (7 1/2%) of the income so collected. For the purposes of this section, “income” means funds received by and accounted for by the guardian or limited guardian on behalf of the ward, other than from the sale of property of the ward, plus the net proceeds from the sale of property of the ward in excess of the value of such property as last determined in the guardianship proceeding.

C. All compensation and reimbursements pursuant to this section shall be approved by the District Court prior to payment.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ⇨49.	Westlaw Topic Nos. 196, 209, 257A.
Indians ⇨126.	C.J.S. Guardian and Ward §§ 82 to 84, 110.
Mental Health ⇨180.	C.J.S. Indians §§ 46 to 50, 53.

### § 5–419. Joint guardians; compensation

Joint guardians shall not receive more compensation than a single guardian.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ⇨49.	Westlaw Topic Nos. 196, 209, 257A.
Indians ⇨126.	C.J.S. Guardian and Ward §§ 82 to 84, 110.
Mental Health ⇨180.	C.J.S. Indians §§ 46 to 50, 53.

### § 5–420. Compensation for attorneys, guardians ad litem and persons conducting evaluations

A. An attorney, other than a public defender, for a ward or a subject of a proceeding pursuant to the Muscogee (Creek) Nation Guardianship Code or whose services are obtained by a guardian on behalf of a ward is entitled to reasonable compensation to be paid from and as a charge against the estate of the ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the guardian of the ward incurred prior to the

appointment of the guardian may be paid from and charged against the estate of the ward, as approved by the District Court prior to payment.

1. Guardians ad litem, other than an employee of a public agency or an employee of a private agency which provides such service pursuant to a contract with a public agency, appointed pursuant to the provisions of this act are entitled to reasonable compensation.

2. A person conducting an evaluation of the subject of the proceeding, whose services resulted in the appointment of a limited guardian or guardian or other order beneficial to the subject of the proceeding, is entitled to reasonable and necessary compensation.

B. Compensation and reimbursements pursuant to this section shall be paid from the financial resources of the subject of the proceeding unless the District Court determines that such payment of compensation and reimbursements would:

a. substantially impede the partially incapacitated or incapacitated person from meeting the essential requirements for his/her physical health or safety, and

b. substantially impair the financial resources of such person, or substantially impede his/her ability to obtain the services necessary for developing or regaining his/her abilities to the maximum extent possible.

1. If not otherwise compensated or reimbursed pursuant to the provisions of paragraph 1 of this subsection:

a. any attorney or guardian ad litem appointed by the District Court who is entitled to compensation shall be compensated from the District Court fund of the District Court,

b. the cost of services provided by a person conducting an evaluation, when such person is the employee of a public agency or the employee of a private agency which provides such services for guardianship proceedings pursuant to an agreement with a public agency, shall be borne by the public agency, or by the private agency in accordance with the terms of such agreement, and

c. if the person conducting an evaluation is a private individual or agency and the cost of the services provided is not otherwise compensable under a Tribal assistance program, compensation for the cost of services shall be from the court fund of the District Court.

2. Compensation or reimbursement from the District Court fund for attorneys and guardian ad litem pursuant to the provisions of this subsection shall be in accordance with the provisions of Title 6 of the Muscogee (Creek) Nation Code Annotated.

C. All compensation and reimbursements pursuant to the provisions of this section shall be approved by the District Court prior to payment.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌49.  
Indians ⇌126.

Mental Health ⇌159, 493.  
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 82 to 84, 110.  
C.J.S. Indians §§ 46 to 50, 53.  
C.J.S. Mental Health § 320.

**§ 5-421. Costs; appointment of guardian to authorize entry into armed forces**

A. No costs shall be required by the District Court Clerk in any guardianship proceeding where the proceeding is for the purpose of appointing a guardian to approve or authorize the ward to enter the armed forces of the United States.

B. If the District Court waives the report, the District Court may waive the fee for the filing of the annual guardianship report required by the Muscogee (Creek) Nation Code Annotated, for a guardian or limited guardian of the person of an incapacitated or partially incapacitated person or for a guardian of the person of a minor.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-422. Appointment of more than one guardian; bond**

The District Court may appoint more than one guardian of any person or property subject to guardianship. Such guardians shall be governed and liable in all respects as a sole guardian. Such guardian shall give bond in like manner and with like conditions as prescribed for sole guardians unless waived.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌15. Westlaw Topic Nos. 196, 209, 257A.  
Indians ⇌126. C.J.S. Guardian and Ward § 10.  
Mental Health ⇌166. C.J.S. Indians §§ 46 to 50, 53.

**§ 5-423. Two or more guardians**

A. If there are two guardians who are residents of the Muscogee (Creek) Nation, the act of one alone shall be effectual:

1. If a co-guardian is laboring under any legal disability from serving, said co-guardian in such case shall be relieved from official liability; provided however, proper finding and valid order of the District Court having jurisdiction therein is first obtained; or

2. If a co-guardian has given the other co-guardian authority in writing to act for both.

B. If there are more than two (2) guardians, the act of a majority of them is valid.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-424. Death of joint guardian**

On the death of one (1) of two (2) or more joint guardians, the power continues to the survivor until a further appointment is made by the District Court.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌26.	C.J.S. Guardian and Ward § 37.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌167.	C.J.S. Mental Health §§ 167 to 168.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–425. Guardian for nonresident ward; notice of hearing**

When a person liable to be put under guardianship, according to the provisions of this chapter, resides outside of Muscogee (Creek) Nation jurisdiction, and has estate therein, any friend of such person, or any one interested in his/her estate, in expectancy or otherwise, may apply to the judge of the District Court for the appointment of a guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌13.	C.J.S. Guardian and Ward §§ 13, 28 to 35,
Indians ⇌126, 519.	49.
Mental Health ⇌137.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–426. Powers of nonresident’s guardian same as in other cases**

Every guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the estate of the ward found within the Muscogee (Creek) Nation, and with respect to the person of the ward, if he shall cease to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇌17, 28.	C.J.S. Guardian and Ward §§ 12, 70 to 76,
Indians ⇌126.	100.
Mental Health ⇌179.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209, 257A.	C.J.S. Mental Health §§ 176 to 179.

**§ 5–427. First appointment is exclusive**

The guardianship which is first lawfully granted, of any person residing outside of Muscogee (Creek) Nation jurisdiction, extends to all the estate of the ward within the same, and excludes the jurisdiction of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**§ 5–428. Bond of guardian of nonresident**

Every such guardian must give bond to the Muscogee (Creek) Nation, in the manner and with like conditions as provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian must be confined to such estate and effects as come to his/her hands in this Nation.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨15.

Indians ⇨126.

Mental Health ⇨166.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 10.

C.J.S. Indians §§ 46 to 50, 53.

**§ 5-429. Removal of property**

When the guardian and ward are both non residents, and the ward is entitled to property in the Muscogee (Creek) Nation which may be removed to another Tribe, to a state, territory or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the Tribe, state, territory or foreign country of the residence of the ward, upon the application of the guardian to the judge of the District Court, or the principal part thereof.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨69.

Indians ⇨127, 141(1).

Mental Health ⇨258.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 95 to 96.

C.J.S. Indians §§ 5, 36, 48 to 50, 53.

**§ 5-430. Application for removal; requirements**

The application must be made upon ten (10) days notice to the resident personal representative or guardian, if there be such, and upon such application the nonresident guardian must produce and file a certificate, under the hand of the Clerk, Judge, Surrogate or other authorized officer, and the seal of the District Court from which his/her appointment was derived, showing:

1. A transcript of the record of his/her appointment.
2. That he has entered upon the discharge of his/her duties.

3. That he is entitled by the laws of the Tribe, state, territory or country of his/her appointment to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the Clerk, Judge, Surrogate or other authorized officer of the District Court having jurisdiction in the place of his/her residence, of the estates of persons under guardianship, or of the highest District Court in such Tribe, state, territory or country, that by the laws of such place the applicant is entitled to the custody of the estate of his/her ward without the appointment of any District Court. Upon such application, unless good cause to the contrary be shown, the Judge of the District Court must make an order granting to such guardian leave to take and remove the property of his/her ward to the Tribe, state, territory or place of his/her residence, which is authority to him to sue for and receive the same in his/her own name, for the use and benefit of his/her ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨69.

Indians ⇨126.

Mental Health ⇨258.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 95 to 96.

C.J.S. Indians §§ 46 to 50, 53.

**§ 5–431. Order for removal discharges local guardian**

Such order is a discharge of the personal representative, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the District Court the receipt therefore of the foreign guardian of such absent ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞69.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward §§ 95 to 96.
Mental Health ☞258.	C.J.S. Indians §§ 46 to 50, 53.

**§ 5–432. Payment of debts**

Every guardian appointed under the provisions of this act shall pay all just debts due from the ward out of the personal estate and income from the real estate of the ward, if sufficient. If said estate and income is not sufficient, then payment shall be made out of the real estate of the ward, up on obtaining an order for the sale thereof, the proceeds of such sale shall be disposed of in the manner provided by law for the sale of real estate of decedents.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞36.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞217.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–433. Collection and settlement of accounts and appearance for ward in suits; compromise and settlement of claim**

A guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to the ward, or may, with the approval of the District Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the District Court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞217.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–434. Discharge and release**

The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by the District Court under this

section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the minor or incapacitated or partially incapacitated person, and he is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for in the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

### § 5-435. Service upon guardian; duty of guardian

Whenever a minor or an incapacitated or partially incapacitated person has a guardian of his/her estate residing within the Muscogee (Creek) Nation, personal service upon the guardian of any process, notice, or order of the District Court concerning the estate of the deceased person, in which the ward is interested, is equivalent to service upon the ward. It is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his/her ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞129.	C.J.S. Guardian and Ward § 263.
Indians ☞126, 510.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞498.	C.J.S. Mental Health §§ 326 to 328.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5-436. Management of estate; income applied for support of ward; sale of realty

Every guardian must manage the estate of his/her ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his/her family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the District Court therefore, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his/her family, if there be any.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞36, 94.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122, 161 to 176, 182 to 198.
Mental Health ☞217, 258.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 257A.	

### § 5-437. Maintenance and support of ward; credit on settlement; payment of third person furnishing necessaries on guardian's refusal

When a guardian has advanced for the necessary maintenance, support and education of his/her ward, an amount not disproportionate to the value of the estate or condition of life of the ward and the same is made to appear to the satisfaction of the District Court, by proper supporting documents and proofs,

the guardian must be allowed credit therefore in his/her settlement. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support or education for his/her ward, the District Court may order the guardian to do so and enforce such order by proper process. Whenever any third person, at the request of the ward, supplies a ward with such suitable and necessary maintenance, support or education which is shown to have been done after refusal or neglect of the guardian to supply the same, the District Court may direct the guardian to pay therefore out of the estate of the ward, and may enforce such payment by due process.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

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|------------------------------------|---------------------------------------|
| Guardian and Ward ⇨30.             | C.J.S. Guardian and Ward §§ 58 to 69. |
| Indians ⇨126, 140.                 | C.J.S. Indians §§ 46 to 50, 53, 56.   |
| Mental Health ⇨232.                | C.J.S. Mental Health § 190.           |
| Westlaw Topic Nos. 196, 209, 257A. |                                       |

**§ 5–438. Execution of waivers or consents for wards**

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact, or any other person legally authorized to act on behalf of any minor or incapacitated or partially incapacitated heir, devisee or legatee may execute waivers or consents for his/her ward as authorized by the District Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**§ 5–439. Investment of money and proceeds of sales**

The District Court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his/her ward’s money in his/her hands, in real estate, or in any other manner most to the interest of all concerned therein; and the District Court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

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|------------------------------------|---|
| Guardian and Ward ⇨53.             | C.J.S. Guardian and Ward §§ 115 to 121. |
| Indians ⇨126, 141(1).              | C.J.S. Indians §§ 36, 46 to 50, 53.     |
| Mental Health ⇨224.                | C.J.S. Mental Health §§ 199 to 202.     |
| Westlaw Topic Nos. 196, 209, 257A. |   |

**§ 5–440. Investment of monies belonging to estates; purchase of homesteads for incapacitated or partially incapacitated persons**

A. Except as may be otherwise provided by law, the money belonging to estates of minors and incapacitated or partially incapacitated persons, subject to the jurisdiction of the District Court, can only be invested in one or more of the following:

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1. Real estate and first mortgages upon real property which do not exceed fifty percent (50%) of the actual value of the property;

2. United States bonds or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States government or any authorized agency thereof;

3. State or Tribal bonds;

4. Bonds of municipal corporations;

5. Accounts in savings and loan associations and credit unions located within the jurisdictional boundaries of the Muscogee (Creek) Nation, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions located within the Muscogee (Creek) Nation, not to exceed the amount insured by the United States government.

B. Upon application to the District Court by the guardian of the estate of the incapacitated or partially incapacitated person, showing to the satisfaction of the District Court:

1. That the incapacitated or partially incapacitated person is vitally in need of a home;

2. That the incapacitated or partially incapacitated person owns no suitable homestead;

3. That the incapacitated or partially incapacitated person has sufficient monthly, semiannual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of a homestead; and

4. That it would be in the best interest of the incapacitated or partially incapacitated person that a suitable homestead be purchased on that basis

The District Court may enter an order authorizing the guardian to execute and deliver a note and mortgage, under such tenor and terms as the District Court will approve, for the purpose of securing payment of any remaining cost of such a homestead. Any note and mortgage given by a guardian under the provisions of this section shall, if authorized by the District Court as provided for in this section, be endorsed "approved" by the Judge. When so authorized and endorsed, the note and mortgage shall be a binding obligation against the ward and the estate of the ward until fully paid. The ward, if subsequently restored to competency to transact business, shall be held firmly bound by the note and mortgage in the same manner and to the same extent as though the ward had given the homestead purchase-money note and mortgage.

C. When an individual guardian enters into an agreement with a bank or trust company, or when the guardian is a bank or trust company qualified and acting under the supervision of the Banking Board, or of the Comptroller of the Currency of the United States of America, the guardian may, upon application to the District Court, invest funds coming into its hands as guardian in any property, real, personal or mixed, pursuant to the Court's order, unless otherwise provided by law.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨53.	C.J.S. Guardian and Ward §§ 115 to 121.
Indians ⇨126, 141(1).	C.J.S. Indians §§ 36, 46 to 50, 53.
Mental Health ⇨224.	C.J.S. Mental Health §§ 199 to 202.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–441. Income insufficient for maintenance; sale of property necessary**

When the income of an estate under guardianship is not sufficient to maintain the ward and his/her family, or to maintain and educate the ward when a minor, his/her guardian may sell the real or personal estate of the ward for that purpose, upon obtaining an order therefore.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–442. Sale of property for investment**

When it appears to the satisfaction of the District Court, upon the petition of the guardian, that for the benefit of the ward or the real or personal estate of the ward, or some part of said estate, should be sold, and the proceeds thereof invested, the guardian may sell the same for such purpose upon obtaining an order therefore.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–443. Proceeds of sale; investment; maintenance of ward and family**

If the property is sold for the purposes mentioned in Sections 5–441 and 5–442 of this Title, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his/her power as provided in the Muscogee (Creek) Nation Guardianship Code, until the capital is needed for the maintenance of the ward and his/her family, or the education of his/her children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-444. Petition for sale; verification**

To obtain an order for such sale, the guardian must present to the District Court a verified petition therefore, setting forth the condition of the estate of the ward and the facts and circumstances on which the petition is founded.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173.	
Mental Health ☞265.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-445. Hearing, notice and order**

If it appears to the District Court, from the petition, that it is necessary or would be beneficial to the ward or the estate of the ward that the real or personal estate, or some part of such estate, should be sold, the District Court shall thereupon make an order directing all persons entitled to notice pursuant to Section 5-201 of this Title for minors or Section 5-310 of this Title for adults to appear before the District Court, at a time and place therein specified in the order and notice, not less than ten (10) nor more than thirty (30) days from the time of making such order, unless notice is waived, as provided in Section 5-446 of this Title, to show cause why an order should not be granted for the sale of such estate. If it appears that it is necessary or would be beneficial to the ward to sell the personal estate or some part of it, the District Court shall order the sale to be made.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173, 519, 533.	
Mental Health ☞266, 267.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-446. Mailing or publication of order; waiver of notice**

The District Court shall cause copies of said order to be mailed to the persons entitled to notice of the proceeding at least ten (10) days before the hearing on the petition. If the mailing address of any such person is unknown, a copy of the order must be published one time the Muscogee (Creek) Nation newspaper and in some newspaper in the county of the last known address, and the hearing of said petition shall not be less than ten (10) days from the date of the first publication of such notice. If written consent to making the order of sale is given by all persons entitled to notice, except the ward if the ward has been adjudicated to be fully incapacitated, said order of sale may be made at once without giving the notice.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞94.	Westlaw Topic Nos. 196, 257A.
Mental Health ☞267.	

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## GUARDIAN AND WARD

C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.

### § 5–447. Hearing upon order; protests

The District Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear the petition and examine the proofs and allegations of the petitioner and any objections made by persons entitled to notice of the proceeding.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞94.  
Indians ☞519.  
Mental Health ☞267.  
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.  
C.J.S. Indians §§ 151 to 179.

### § 5–448. Partition of real estate; assent to; approval of District Court

The guardian may join in and assent to a partition of the real estate of the ward with the written approval of the Judge of the District Court, whenever such assent may be given by any person.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

### § 5–449. Sale of oil, gas, mining leases

Personal representatives, including but not limited to guardians of the property, guardians of minors or of incapacitated or partially incapacitated persons are hereby authorized and empowered to sell and execute oil and gas or other mining leases upon the lands belonging to the estates of such deceased persons or of such minors or incapacitated or partially incapacitated persons in consideration of a royalty or part or portion of the production thereof.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞94.  
Indians ☞193, 194.  
Mental Health ☞258.  
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.  
C.J.S. Indians §§ 118 to 121.

### § 5–450. Testimony; witnesses; attendance and examination of

At the hearing on the petition the guardian may be examined on oath, witnesses may be produced and examined, and process to compel the attendance and testimony of witnesses may be issued by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞131.  
Indians ☞520.  
Mental Health ☞505.

Westlaw Topic Nos. 196, 209, 257A.  
C.J.S. Guardian and Ward § 266.  
C.J.S. Indians §§ 151 to 179.

**§ 5-451. Costs awarded prevailing party on hearing of objections to order**

If any person entitled to notice of the proceeding enters an objection to the requests made in the petition, the District Court may, in granting or refusing the order requested by the petition, award costs to the prevailing party, and enforce the payment thereof.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞136.

Indians ☞660.

Mental Health ☞518.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 270.

C.J.S. Indians §§ 151 to 179.

**§ 5-452. Order for sale; public or private sale**

If, after a full examination, it appears necessary or for the benefit of the ward that the real or personal estate of the ward, or some part thereof, should be sold, the District Court may grant an order therefore, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale, provided nothing herein shall alleviate legal requirements regarding the sale of restricted property.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-453. Sale bond by guardian**

Every guardian authorized to sell real estate shall, before the sale, give bond to the Muscogee (Creek) Nation, with sufficient surety to be approved by the District Court, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for by the Muscogee (Creek) Nation Guardianship Code. The District Court may order that such bond is not required if the District Court specifically finds the general bond, if any, of the guardian is of a sufficient penal amount to provide for the proceeds of the sale in addition to the property secured by said bond or upon a finding by the District Court that:

1. The anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward, after sale, is less than forty thousand dollars (\$40,000.00); and

2. The guardian of the ward is either a parent, spouse, brother, sister, grandparent, child or grandchild of the ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞15.

Indians ☞126.

Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 10.

C.J.S. Indians §§ 46 to 50, 53.

**§ 5-454. Sales governed by same law as in estates of decedents**

Except as otherwise specifically provided by the Muscogee (Creek) Nation Guardianship Code, all the proceedings pursuant to petitions of guardians for

sales of property of their wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales and ordering and making conveyances of property sold shall be had and made as provided and required by the provisions of law concerning the estates of decedents.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞126, 196.	
Mental Health ☞258.	C.J.S. Indians §§ 37 to 38, 46 to 50, 53, 101 to 108, 110 to 111, 126 to 132.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–455. Order in force for one year only**

No order of sale granted pursuant to Sections 5–441 through 5–454 of this Title continues in force more than one (1) year after granting the same, without a sale being had.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173, 533.	
Mental Health ☞258.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–456. Terms of sale; security**

All sales of real estate of wards must be for cash, or for part cash and part deferred payments not to exceed ten (10) years, bearing interest from date of sale as, in the discretion of the District Court, is most beneficial to the ward. A guardian making a sale of real property shall demand and receive from the purchasers a note and mortgage on the real estate sold, with such additional security, if any, as the District Court deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**§ 5–457. Limitation of action for recovery of estate sold; disability and removal thereof**

No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three (3) years immediately following the termination of the guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

## Library References

Guardian and Ward ↻125.

Indians ↻508.

Mental Health ↻478.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 260.

C.J.S. Indians §§ 151 to 179.

**§ 5-458. Exchange of property held by ward or wards in common; notice**

When it shall appear to the District Court to be to the advantage or best interests of the ward, or wards, to exchange an interest in real estate held by such ward or wards in common with another, or others, for other real estate also held in common by such ward or wards with another or others, to be owned solely by said ward or wards, after such exchange, a guardian of the ward's estate may be authorized by the District Court, after hearing and appraisal, to effectuate such exchange and to give or accept cash in part consideration. The provisions of Section 5-446 of this Title governing the giving of notice of hearing of a petition for an order to sell, and appraisal, shall apply and govern an order authorizing an exchange of real estate of a ward or wards by his/her guardian.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-459. Sale of perishable property; report; good faith determination of perish ability**

A. Notwithstanding any other provision contained in the Muscogee (Creek) Nation Guardianship Code, a guardian or limited guardian of the property of a ward may sell, at public auction or private sale, without obtaining prior District Court authorization for sale, without filing a return of sale, and without obtaining District Court confirmation of sale, any personal property of the ward which is perishable, is otherwise likely to depreciate in value, or would cause the estate of the ward to incur loss or expense if kept. Title to such property shall pass to the purchaser thereof without approval of or confirmation by the District Court of such sale.

B. With respect to a limited guardian of the property, this section shall apply only to property of the ward which is subject to such limited guardian's control pursuant to a dispositional order.

C. Any sale of property made by a guardian or limited guardian of the property of a ward pursuant to this section shall be reported in the accounting next filed by such guardian or limited guardian after the making of the sale. If the District Court determines the property sold was not perishable or was not otherwise likely to depreciate in value and would not have caused the estate of the ward to incur loss or expense if kept, the guardian or limited guardian who made such sale shall not be surcharged or otherwise held liable with respect to such sale if he made a reasonable determination in good faith that the property sold was perishable, was otherwise likely to depreciate in value, or would have caused the estate of the ward to incur loss or expense if kept.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**§ 5-460. Former leases legalized**

All such leases and grants of mineral oil and gas heretofore made and confirmed by the District Court, in consideration of a royalty, part or portion of the production thereof, are hereby legalized.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Indians ☞194.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 118 to 121.

**§ 5-461. Removal of guardians**

A guardian may be removed by the District Court for any of the following causes:

1. For abuse of his/her fiduciary responsibility.
2. For continued failure to perform his/her duties.
3. For incapacity to perform his/her duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his/her duties.
6. If the instrument in which the person was nominated as guardian is judicially determined to be invalid.
7. In the case of guardian of the property, for insolvency.
8. When it is no longer proper that the ward should be under guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞25.	C.J.S. Guardian and Ward §§ 45 to 48, 50.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞174.	C.J.S. Mental Health §§ 169 to 173.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5-462. Suspension of power of guardian; marriage of incapacitated or partially incapacitated person**

- A. The power of a guardian is suspended only:
1. By order of the District Court;
  2. If the appointment was made solely because of the ward's minority, by his/her obtaining majority; or
  3. The guardianship over the person only of a minor ward, by the marriage of the ward;
  4. The person in question is emancipated.
- B. Whenever a person who has been found by the District Court to be an incapacitated or partially incapacitated person marries, the District Court may, upon application of an interested person, hold a review hearing to determine whether:

1. The guardianship should be terminated;
2. A successor guardian should be appointed;
3. The limitations on the ward, or the powers and duties of the guardian; or
4. The guardian should be continued unchanged.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞21.	C.J.S. Guardian and Ward § 40.
Indians ☞126, 533.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞167, 179.	C.J.S. Mental Health §§ 167 to 168, 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5-463. Termination of authority and responsibility of guardian; removal; resignation; final account; notice and hearing

A. The authority and responsibility of guardian terminates upon the death of the guardian, or the ward, the determination of incapacity of the guardian, or upon removal or resignation of the guardian. Termination does not affect the liability of a guardian for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian. The authority and responsibility of a guardian of a minor also terminates upon the marriage, emancipation, or majority of the ward.

B. The District Court, after notice and hearing, may remove a guardian for cause if the guardian fails for thirty (30) days, after he/she is required to do so, to render an account or make a report, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.

C. Every guardian may resign when it appears proper to allow the same and upon the resignation or removal of a guardian the District Court may appoint a successor guardian in the place of the guardian who has resigned or has been removed or make other appropriate orders pursuant to the provisions of the Muskogee (Creek) Nation Guardianship Code.

D. Upon termination of the disability of the ward or upon his/her death, or upon the resignation or removal of the guardian, a guardian or the guardian's personal representative, or if the guardian is incapacitated or deceased and there is no personal representative, then some suitable person appointed by the District Court shall file the guardian's final account and request for final compensation with the District Court within thirty (30) days after such event.

1. The District Court shall set the final account for hearing on a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first class mail:

a. if the guardianship was established for a minor or a minor's estate, to the persons entitled to notice pursuant to Section 5-201 of this Title if the ward is still a minor, or to the ward only if the ward has attained majority, is emancipated, or has married, or if the ward is deceased, to the persons entitled to notice pursuant to Section 5-201 of this Title and to the personal representative of the ward's estate if such representative has been appointed and the

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representative’s appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account; or

b. if the guardianship was established for an adult or an adult’s estate, unless the ward is deceased, and paragraphs 2, 3 and 7 of subsection A of Section 5–310 of this Title and, if the ward is deceased, to the personal representative of the ward’s estate if such representative has been appointed and the representative’s appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account.

2. Any person to whom notice is given in accordance with this subsection may appear at the hearing on the final account and file his/her exceptions in writing to the final account and contest the same.

3. The settlement of the account and the allowance thereof by the District Court shall be conclusive against all persons interested in the estate of the ward, except as to persons subject to a legal disability at the time the notice of hearing is given.

4. Upon approval of the final account, the guardian and his/her sureties, if any, shall be discharged.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞21 to 26.	C.J.S. Guardian and Ward §§ 36 to 38, 40 to 42, 45 to 48, 50.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞167 to 174.	C.J.S. Mental Health §§ 167 to 173, 180 to 182.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–464. Termination of guardianship when unnecessary**

The guardian of an incapacitated or partially incapacitated person or minor may be discharged by the District Court when it appears to the District Court, on the application of the ward or otherwise, that the guardianship is no longer necessary.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

**Library References**

Guardian and Ward ☞18.	C.J.S. Guardian and Ward §§ 23, 50.
Indians ☞126, 133.	C.J.S. Indians §§ 46 to 50, 53, 150.
Mental Health ☞167.	C.J.S. Mental Health §§ 167 to 168.
Westlaw Topic Nos. 196, 209, 257A.	

**§ 5–465. Civil liability of guardians or petitioners; damages**

A. Any guardian who willfully violates the duties or willfully misuses the powers assigned by the District Court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the District Court to surcharge a guardian as otherwise provided by law.

B. Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this act or a petition or application without a

reasonable basis in fact for such a petition pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞64.	C.J.S. Guardian and Ward § 97.
Indians ☞126, 133, 535.	C.J.S. Indians §§ 46 to 50, 53, 150 to 179.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5-466. Citation for concealment or embezzlement

Upon complaint made to the District Court by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against anyone suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the ward or to his/her estate, the District Court may require such suspected person to appear before the District Court, and may examine and proceed with such person on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

#### Library References

Guardian and Ward ☞64.	C.J.S. Guardian and Ward § 97.
Indians ☞126, 133, 519.	C.J.S. Indians §§ 46 to 50, 53, 150 to 179.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

### § 5-467. Reporting of abuse, neglect, or exploitation; violation and penalty; civil liability

A. Any person having reasonable cause to believe that an incapacitated person, a partially incapacitated person, or a minor is suffering from abuse, neglect, or exploitation shall make a report to Children and Family Services, the office of the Attorney General, or the Lighthorse Police Department as soon as such person is aware of the situation.

1. With regard to minors, the use of ordinary force as a means of discipline shall not constitute abuse.

2. Reports regarding the abuse, neglect, or exploitation of an incapacitated person or a partially incapacitated person shall be made and shall be governed by the provisions of the Protective Services for Vulnerable Adults Act<sup>1</sup>. Reports regarding the abuse, neglect, or exploitation of a minor shall be made and shall be governed by the Muscogee (Creek) Nation Child Abuse Reporting and Prevention Act<sup>1</sup>.

B. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

C. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have

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immunity from any civil or criminal liability 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.

D. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be civilly liable for any actual damages suffered by the person or persons being reported and for any punitive damages set by the District Court or jury which may be allowed in the discretion of the District Court or jury.

E. No employer shall terminate the employment, prevent or impair the practice or occupation of, or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the provisions of this section.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

<sup>1</sup> So in original.

**Historical and Statutory Notes**

NCA 07-327, § 4 provides:

**“Sovereign Immunity.** Nothing in the Act shall abrogate or otherwise waive the sovereign immunity of the Muscogee (Creek) Nation.”

**Library References**

Guardian and Ward ⇌29.  
Indians ⇌126, 133.  
Infants ⇌13.5.  
Mental Health ⇌179.  
Westlaw Topic Nos. 196, 209, 211, 257A.

C.J.S. Guardian and Ward §§ 51 to 55.  
C.J.S. Indians §§ 46 to 50, 53, 150.  
C.J.S. Infants §§ 116 to 117.  
C.J.S. Mental Health §§ 176 to 179.

## **CHAPTER 6. MUSCOGEE (CREEK) NATION CHILD SUPPORT ENFORCEMENT CODE**

### **Section**

- 6-101. Title and codification.
- 6-102. Findings.
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- 6-104. Definitions.
- 6-105. Establishment of the Muscogee (Creek) Nation Office of Child Support Enforcement.
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- 6-115. Income shared model.
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- 6-130. Pleadings.
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- 6-139. Bankruptcy.
- 6-140. Filing pleadings and filing fee with court clerk.
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- 6-142. Docketing orders.
- 6-143. Immediate income assignment and garnishment.
- 6-144. Voluntary income assignments.
- 6-145. Modification, suspension or termination of income assignment orders.
- 6-146. Enforceable voluntary agreement.
- 6-147. Exemption from limitation.

## CHILDREN AND FAMILY RELATIONS

### Section

- 6-148. Government records.
- 6-149. Writs of assistance, specific performance and bonds.
- 6-150. Persistent non-support.
- 6-151. Authority to revoke or suspend licenses for noncompliance with child support order.
- 6-152. Full faith and credit.
- 6-153. Responsibility of minor parents.
- 6-154. Life insurance.
- 6-155. Severability.

### § 6-101. Title and codification

This Act shall be entitled the Muscogee (Creek) Nation Child Support Enforcement Code and shall be codified as Chapter 6 in Title 6, Children and Family Relations, of the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-102. Findings

The Muscogee (Creek) National Council finds that:

- A. Child support is a basic legal right of the Indian parents and children.
- B. Child support payments have a substantial impact on Indian child poverty and welfare expenditures.
- C. The Muscogee (Creek) Nation has a duty to ensure that children are cared for by their parents and that parents provide the support needed to their children.
- D. Parents have a legal obligation to provide financial support for their children.
- E. The Muscogee (Creek) Nation needs to establish child support standards which shall provide guidance to parties seeking child support, and encourage the payment of child support to decrease overall costs to the Indian citizens while increasing the amount of financial support collected for Indian children.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-103. Purpose

The purpose of this Act is to establish within the Department of Justice a Tribal IV-D agency, the Muscogee (Creek) Nation Office of Child Support Enforcement, and to establish procedures for the location of parents (custodial or non-custodial), and the establishment, modification and enforcement of child support obligations.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Library References

Indians ↻137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-104. Definitions**

All terms used in this chapter shall be defined as listed in Chapter 1, § 1-102<sup>1</sup> of this Title, unless defined below:

A. “Absent parent or obligor” means the parent of a child(ren) either during the marriage or outside of marriage who is not providing the custodial parent with child support for the benefit of the child(ren) or who is bound by court order to pay a child support obligation.

B. “Alleged father” means a man whose relation to a child has not been legally established, but who has been named as the father by the child’s mother, or is subject to a presumption of paternity.

C. “Arrearage” means the total unpaid child support obligation owed by a parent or obligor who is required by court order to pay support.

D. “Assignment of rights” means a document signed by a recipient of Temporary Aid for Needy Families (TANF) benefits assigning child, spousal and medical support to the Tribal or state IV-D office.

E. “Assignment of support obligation” means, unless otherwise specified, any support obligation which has been assigned to the Tribe or state under 45 CFR 232.11 or 42 U.S.C. § 471(a)(17) of the federal Social Security Act, or any medical support obligation or payment for medical care from any third party which has been assigned to the Tribe or state under 45 U.S.C. § 433.146.<sup>3</sup>

F. “Child” means any unmarried person under the age of twenty (20) years and a full-time student entitled to child support.

G. “Child support” means the financial obligation a parent has towards his/her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the parent or by parentage of any child(ren); the financial obligation of a parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the court.

H. “Child support guidelines” means a standard method of setting child support obligations based on the income of the parent(s) and other factors as determined by law.

I. “Child support rights” means the rights of a custodial parent to receive child support from an absent parent or obligor as determined under the laws of the Muscogee (Creek) Nation or comparable laws of any other jurisdiction or territory.

J. “Children of the parties” shall mean the natural and/or adopted children of the parties to an action for child support, but shall not include the natural and/or adopted child(ren) of only one of the parents.

K. “Court” means the District Court of the Muscogee (Creek) Nation or a court of another state or territory having jurisdiction to determine a parent’s liability for child support.

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L. “CSE” means the Muscogee (Creek) Nation Office of Child Support Enforcement.

M. “Custodial parent or obligee” means the parent with legal custody of the child(ren) pursuant to a court order, or who exercises physical custody of the child(ren) on the basis of an agreement between the parents; in the absence of a parent the term shall also include a guardian or custodian appointed by a court of competent jurisdiction.

N. “District Court” means the District Court of the Muscogee (Creek) Nation.

O. “Garnishment” means the process whereby an order is directed to an employer, bank or agent, holding monies or property of an absent parent or obligor, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

P. “Gross income” means income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest, trust income, annuities, capital gains, unemployment compensation, worker’s compensation, disability insurance benefits, tips, gifts, prizes, royalties and alimony; it includes in-kind and non-cash income, calculated at reasonable market value.

Q. “Immediate income assignment” means a provision in a child support order which directs the obligor to assign a portion of the monies, income or periodic earnings due and owing by the obligor to the person entitled to support or to another person designated by the child support order or assignment for payment of support, arrearage or both; the income withholding order shall be in an amount which is sufficient to meet the periodic child support arrearage or other maintenance payments or both imposed by the court or administrative order.

R. “Income tax refund interception” means the remedy whereby any income tax refund of an absent parent or obligor shall be intercepted directly by the United States, a state, the Muscogee (Creek) Nation or other Indian Tribe or nation, for the payment of public and/or child support debt.

S. “Joint custody” shall mean a custody arrangement whereby each parent provides a suitable home for the child(ren) of the parties, when the child(ren) spend fifty percent (50%) of the year in each home and the parent significantly share the duties, responsibilities and expenses of parenting.

T. “Public assignment of support rights” means the assignment of child support rights by the custodial parent to the Muscogee (Creek) Nation or any state or Tribal IV-D agency; such assignment may be in connection with the payment of benefits under a Temporary Aid to Needy Families (TANF) state or Tribal program as a consequence of the failure of an absent parent to provide child support.

U. “State” means a state of the United States, the District Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country as defined in 18 U.S.C. § 1151.

V. “State lottery and Indian gaming winnings” means any and all monies and/or goods or Tribal services which are awarded to an individual as a consequence of a state, Indian Nation and/or Tribal gaming operation.

W. “TANF” means Temporary Aid to Needy Families<sup>2</sup> which is a federal program that provides temporary assistance to families in need. Services may be provided by a Tribal or state IV-D program.

X. “Voluntary income assignment” means a voluntary written assignment of earned wages which is submitted by an employee to an employer, authorizing the employer to pay the earned wages of the employee to or for the benefit of a child.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

<sup>1</sup> See Title 6, § 1-102 et seq.

<sup>2</sup> 42 U.S.C.A. §§ 601 et seq.

<sup>3</sup> So in original; the sections cited do not exist.

### § 6-105. Establishment of the Muscogee (Creek) Nation Office of Child Support Enforcement

The Muscogee (Creek) Nation Office of Child Support Enforcement is hereby established as a division within the Department of Justice and under the direction of the Office of the Attorney General.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇨ 137, 210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

### § 6-106. CSE staff

**A. Director/Managing Attorney.** CSE shall be under the direction and control of the Director/Managing Attorney, who shall answer to the Attorney General of the Nation and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

**B. Director/Managing Attorney-Qualifications.** The qualifications for the Director/Managing Attorney shall be:

1. Possess a juris doctorate from an accredited law school and be a member in good standing of the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar Association with preference given to those full citizens of the Muscogee (Creek) Nation.

2. Have a familiarity with Tribal, state and federal child support laws, regulations and policies and possess a minimum of five (5) years experience in the practice of law, preferably in the area of divorce, child support and child custody.

**C. Director/Managing Attorney Duties.** The duties of the Director/Managing Attorney shall be:

1. Supervise and assist in all areas of program design and implementation for the Office of Child Support Enforcement.

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2. Create, hire, supervise, oversee and direct personnel and support staff within CSE including the positions of attorney, investigator, case manager, law clerk, financial specialist, child support specialist, accountant, and administrative assistant and those other positions necessary for the operation of the child support enforcement program.

3. Ensure that all office and staff activities are in compliance with Tribal and federal child support enforcement laws, rules, regulations and agencies policies. Develop and maintain a liaison with client agencies, local district attorney offices, and other Tribal and state child support agencies.

4. Coordinate, plan and maintain the CSE budget.

5. Represent Tribes, state agencies and custodial parents as a legal advocate.

6. Represent CSE at meetings, conferences, and various public events.

7. Serve on appropriate policy and decision making bodies, boards, committees and planning teams on the local, Tribal and state level to influence the establishment of programs to help improve the quality of life for Native American children and families.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137, 210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

**§ 6–107. Venue**

The venue for actions establishing, modifying and/or enforcing child support orders shall be the Muscogee (Creek) Nation District Court located in Okmulgee County, Oklahoma.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137, 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 6–108. Jurisdiction**

A. Jurisdiction shall be according to the provisions established in Chapter 1 of Title 27 of the Muscogee (Creek) Nation Code Annotated.

B. To further the best interests of Indian children, the District Court shall have jurisdiction over all parties involved in an action to establish paternity, establish, modify and enforce child support orders, if the child is a citizen of a federally recognized Indian Tribe or is eligible for citizenship in said Indian Tribe and is residing within the territorial boundaries of the Nation.

C. The District Court may exercise personal jurisdiction over a person, whether or not a resident of the Muscogee (Creek) Nation, who is a party to a paternity action.

D. When a person who is subject to the jurisdiction of the Court has departed from the Muscogee (Creek) Nation territorial boundaries, he or she may be served outside of the Muscogee (Creek) Nation by any method that is authorized by the statutes of the Muscogee (Creek) Nation and/or the state of residence.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137, 501.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6-109. Recognition of child support orders

A. If one or more child support orders have been issued with regard to an obligor and a child(ren), a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

1. If only one court has issued a child support order, the order of that court must be recognized;

2. If two or more courts have issued child support orders for the same obligor and child(ren), and only one of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized;

3. If two or more courts have issued child support orders for the same obligor and child(ren), and more than one of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the State of residence of the child(ren) must be recognized, but if an order has not been issued in the state of residence of the child(ren), the order most recently issued must be recognized;

4. If two or more courts have issued child support orders for the same obligor and child(ren), and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized;

5. The court shall apply the law of the state of the court that issued the recognized order.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137, 531, 539.  
Judgment ☞832.5.  
Westlaw Topic Nos. 209, 228.

C.J.S. Indians §§ 151 to 179.  
C.J.S. Judgments § 1314.

### § 6-110. Muscogee (Creek) Nation Office of Child Support Enforcement

A. The Muscogee (Creek) Nation Office of Child Support Enforcement (CSE) is authorized to perform the services and functions included in this and other sections. CSE is authorized to function in accordance with § 455(f) of the Social Security Act<sup>1</sup>, implemented by 45 CFR Part 309, 310. CSE shall

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assist Indian children in the establishment, modification and enforcement of child support orders, establishment of paternity and location of parents. Such authority shall:

1. Provide child support collection services, parent location services and paternity determination services;

2. Initiate legal actions to implement the provisions of this act;

3. Request Tribal agencies and political subdivisions of state, county or municipal governments to assist in the location of absent parent(s) or obligor(s) and/or their assets by searching their records for names and addresses;

4. Request information from any state agency, political subdivision of a state, person, sole proprietorship, company, corporation, utility, partnership, association or any other organization to be used by CSE for child support enforcement purposes when CSE has reason to believe that an individual is not providing for his/her child(ren).

B. CSE shall act as a referee to determine child support pursuant to guidelines established in Sections 6-118 and 6-122 of this title.

C. CSE may institute child support collection cases in the name of the Muscogee (Creek) Nation on behalf of any custodial parent or obligee for whom CSE is collecting child support obligations.

D. CSE shall be exempt from the filing fees of the Court in matters pertaining to the official functions and duties of CSE.

E. CSE shall have the authority to report the names and social security numbers of absent parents or obligors and the amounts of unpaid public and/or support debt to credit reporting bureaus, driver license and recreational licensing agencies and professional licensing agencies and boards.

F. CSE shall have the power to establish or modify the fee schedule required on the establishment and enforcement of public debt and child support, including application fees, filing fees and any other fees associated with the process.

G. CSE shall have the power to utilize funds which it collects pursuant to this Act, provided, that state and federal funds shall not be supplanted by fees collected by CSE.

H. CSE shall have subpoena power to obtain the names, addresses, employment information and any other necessary data to be used for child support enforcement purposes.

I. CSE shall have the power to negotiate and enter into cooperative agreements and other contracts necessary to implement the provisions of this Act.

J. Attorneys and advocates employed by CSE for the establishment of paternity and to establish, enforce, and collect a child support obligation or attorneys acting for CSE through an agreement, may not represent the Nation or state in administrative or civil actions involving the same parties. CSE attorneys and advocates represent the Nation and not the interests of any other party.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

<sup>1</sup> 42 U.S.C.A. § 655(f).

#### Library References

Indians ☞ 137, 210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

### § 6-111. CSE services

**A. Locate individuals.** CSE shall assist custodial parent(s) or guardian(s) as well as state or other Tribal IV-D agencies requesting assistance by using local, state and federal resources in locating parents (custodial or non-custodial) and/or obligors, and their sources of income and assets, who have a financial obligation to support their child(ren) and are absent from the home.

**B. Establish paternity.** CSE shall establish paternity upon request of a parent, in accordance with Chapter 7 of this Title, when paternity has not been legally established.

**C. Establish child support.** CSE shall establish child support in accordance with those provisions as set forth in this chapter through court actions during proceedings for dissolution of marriage, paternity or guardianship.

**D. Enforcement of child support orders.** CSE shall enforce child support orders of the Nation, or other Indian tribes and states in accordance with this chapter.

**E. Modification of Child Support Orders.** CSE in accordance with this act is authorized to review and modify child support orders to comply with the provisions of this chapter.

1. Modification may be requested if there is an increase or decrease of 15% in the combined gross income used to determined child support;

2. Not less than once every three (3) years, CSE shall notify each parent subject to a child support order of their right to a review of the order;

3. At the request of the custodial, non-custodial parent or guardian who is not receiving public or Tribal assistance, whose order has not been modified within three (3) years;

4. Whether a request for review is made by a parent, guardian or CSE, all parties should receive written notice of CSE's intent to review for possible modification prior to the commencement of the review. Said notice should advise the parent of the procedures and standards for review and inform them of their right to object via a hearing to any proposed changes.

**F. Collection and Distribution of Child Support.** CSE shall provide for the collection and distribution of child support in accordance with the provisions in this chapter.

**G. Notice of Support Collected.** CSE shall provide an Annual notice of Support Collected to families receiving services during the prior year. Said Notice shall state the amount of child support collected itemized by month of collection. In addition, a Notice of Child Support Collected must be provided at any time upon request by either the custodial or non-custodial parent.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ⇌137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-112. Public assignment of child support rights**

A. A public assignment of child support rights constitutes an obligation owed by the absent parent or obligor to the Nation or any state or Tribal IV-D agency. If requested by CSE, the custodial parent shall:

1. Assign all rights for child support to the Nation or state or other Tribal agency if the family is currently receiving or formerly received assistance from a TANF program and CSE has received a request for assistance in collecting support on behalf of the family from a state or other Tribal IV-D agency;

2. A custodial parent who fails to cooperate with CSE shall be sanctioned according to the provisions of the Tribal or state agency that issued the benefits. CSE shall notify the agency of the recipient's failure to cooperate. CSE reserves the right to close the case.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ⇌137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-113. Assignment of rights and collection of support payments by the IV-D agency**

A. In any case in which support payments are collected for a recipient of aid under the Tribe's or state's IV-A plan in which an assignment is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family.

B. The assignment must include at a minimum:

1. the name, address, date of birth and Social Security Number of the recipient of the TANF benefits;

2. the name, date of birth, Social Security Number(s) of the child(ren) for whom benefits are paid;

3. the name, address, date of birth, Social Security Number and employment of the obligor or absent parent;

4. the date and amount of the last support payment received;

5. the relationship of the child(ren) to the recipient of the TANF benefit;

6. the relationship of the child(ren) to the obligor; and

7. the signature of the recipient and the date the assignment of rights was signed.

C. A copy of the assignment may be filed with the Court and served upon an absent parent or obligor at any time a petition or complaint has been filed with the Court.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-114. Notice of assignment of child support rights**

A. When the Nation, any state or Tribal IV-D agency has received an assignment of child support rights, CSE may issue a Notice of Public Assignment of Child Support Rights. The notice and a copy of the assignment shall be sent to the parents and any applicable employer. The notice shall include:

1. A statement providing the name(s) of the child(ren) for whom an obligation is alleged and for whom child support is being sought, and the name of the custodial parent;

2. A statement of the child support obligation accrued, and a demand for immediate payment, for those cases wherein a court or administrative order has established the child support obligation;

3. A statement of the child support obligation which CSE has determined to be appropriate and in accordance with the provisions of this act.

4. A statement from the alleged father that he disagrees with the claim of his paternity of the child(ren), or that the absent parent or obligor disagrees with the amount of the child support obligation or the periodic payment required thereon, each must file with CSE a written answer, and request for hearing, within thirty (30) days of service, and CSE shall immediately transmit the written answer and request for hearing to the Court;

5. A statement that if no timely written answer is received, the Court shall enter an order in accordance with the Notice of Administrative Assignment of Child Support Rights;

6. A statement that upon issuance of a court order the absent parent's or obligor's property without further notice or hearing, will be subject to collection action, including but not limited to wage execution, garnishment, income tax refund interception, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of the Nation and personal property wheresoever located;

7. A statement that the absent parent or obligor is responsible for notifying CSE of any change of address or employment;

8. A statement of all fees associated with the child support enforcement process which may be charged against the absent parent or obligor;

9. A statement indicating that the entry of default against the absent parent or obligor will result in an order being entered, and the absent parent or obligor without further notice or hearing, will be subject to collection action;

10. Any other information as CSE deems appropriate.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.

Westlaw Topic No. 209.

C.J.S. Indians § 152.

### § 6-115. Income shared model

The Muscogee (Creek) Nation Office of Child Support Enforcement Guidelines are based on the income shared model. The income shared model is predicated on the concept that the child(ren) should receive the same proportion of parental income that he/she would have received if the parents lived together. A basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household).

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇌137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-116. Use of child support guidelines

In any action to establish or modify child support, the child support guidelines as set forth in this act shall be applied to determine the amount of child support due and there shall be a rebuttable presumption for the award, that the amount of the award which would result from the application of the child support guidelines is the correct amount of child support to be awarded. The Court may deviate from the amount of child support if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. If the Court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact support such action. The child support guidelines shall be used for temporary and permanent orders, separations, dissolutions and support decrees arising despite non-marriage of the parties. The child support guidelines shall be used by the Court as the basis for reviewing the adequacy of child support levels in uncontested cases as well as contested hearings.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇌137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-117. Obligation

A. Any child(ren) shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school.

B. The absent parent's child support obligation shall be established as provided in this chapter, or by a voluntary agreement which meets the requirements of Section 6-118 and Section 6-122 of this act:

1. The obligation shall commence, unless otherwise stated, on the first day of the month following the court order which established the amount of the child support payment;

2. The amount of the child support obligation shall be the amount set in the order;

3. Until an court order is entered, the amount of the child support obligation shall be presumed to be the amount determined in writing by CSE and shall be in accordance with the child support guidelines.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇄137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-118. Determination of child support amount

To establish or modify child support, the child support guidelines as set forth herein shall be the basis for determining the amount of child support due.

A. For purposes of this section and in determining child support, the non-custodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

B. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined gross income of both parents. The child support guideline schedule as provided in Section 6-122 of this Title shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

(2) "Earned income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from salaries, wages, commissions, bonuses, and severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from dividends, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, gifts, prizes and royalties.

b. Specifically excluded from gross income are (1) actual child support received for children not before the Court, and (2) benefits received from means-tested public assistance programs including, but not limited to:

- (1) Temporary Assistance for Needy Families (TANF)
- (2) Supplemental Security Income (SSI)
- (3) Food stamps and
- (4) General Assistance and State Supplemental Payments for Aged, Blind and the Disabled

3. a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.

b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the Court to be inappropriate for determining gross income for calculating child support.

c. The Court shall carefully review income available to the parent to satisfy a child support obligation.

d. The court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may be but are not limited to a company car, free housing, or reimbursed meals.

4. a. For purposes of computing gross income of the parents, the Court shall include for each parent, whichever is most equitable, either:

(1) all earned and passive monthly income,

(2) all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,

(3) the average of the gross monthly income for the time actually employed during the previous three (3) years, or

(4) the minimum wage paid for a forty-hour work week.

b. If equitable, the Court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

5. The amount of any preexisting court order for current child support for child(ren) not before the Court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the Court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service;

7. The results of paragraphs 2, 3, 4, 5, and 6 of this subsection shall be denominated adjusted gross income.

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the child support guideline schedule consulted for the total combined base monthly obligation for child support.

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

10. a. The actual medical and dental insurance premium for the child(ren) shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child(ren) before the Court, only that portion of the premium attributed to the child(ren) before the Court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation.

11. a. The court shall determine the actual child care expenses reasonably necessary to enable either or both parents to:

- (1) be employed
- (2) seek employment or
- (3) attend school or training to enhance employment income.

b. The actual child care costs incurred for the purposes authorized by this paragraph shall be allocated and paid monthly in the same proportion as base child support.

c. The Court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the Court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.

d. If the Court determines that it will not cause detriment to the child(ren) or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

12. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child(ren) incurred by either parent and not reimbursed by insurance may be allocated in

the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense.

13. Under special circumstances custodial and non-custodial parents may mutually agree to in-kind support; and when the Court deems appropriate, the court may allow part of the child support obligation to be paid with in-kind contributions and/or services. The in-kind support may include monetary or appropriate goods contribution for the child's cultural and traditional practices. If the Court so orders, all or a portion of the current child support obligation to be met with in-kind contributions, the Court shall first assign a fair market value to the in-kind contributions and/or services and apply that amount to the current obligation owed. In-kind contributions and/or services shall not be permitted to satisfy assigned support obligations or child support in arrears. [Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–119. Rebuttable presumption for award of child support

Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded. The Court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of any child involved.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–120. Review of child support orders; compliance with child support guidelines; disclosure of financial status

**A. Review of child support orders.** In all cases in which child support services are being provided under the Nation's child support guidelines as provided for in this chapter, CSE shall conduct a review upon the request of any party of its own decision. All procedures for reviews will be conducted pursuant to rules promulgated by CSE. Prior to such review, all parties shall receive notice of the review as provided by law.

**B. Compliance with child support guidelines.** If CSE determines that individual awards are not in accordance with the child support guidelines provided for in Section 6–118 and Section 6–122 of this Title, the case shall be

presented to the Court for action. The Court shall review the award to determine its compliance with child support guidelines and order modifications if appropriate.

**C. Disclosure of financial status.** In a proceeding to establish or modify a child support order, each party shall completely disclose his or her financial status. The parties should be ordered to provide proof of income to CSE within five (5) days of the court order. If a party does not comply with such order, then all income alleged by the custodial parent shall be accepted as true.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-121. Health insurance and day care expenses

A. In all cases where child support is ordered, such order may provide for health insurance and other out-of-pocket medical costs of the child(ren), and for employment-related day care expenses.

B. The child support obligation shall be determined pursuant to the guidelines established in Section 6-118 and Section 6-122 of this Title and medical costs or day care expenses shall be determined pursuant to Section 6-118, paragraphs 10 and 11 of this Title.

C. If the Court orders the payment of retroactive medical support the Court must use the guidelines established in Section 6-118 and Section 6-122 but may take into consideration the obligor's ability to pay, or justify the deviation from the application of the guidelines pursuant to Section 6-116 and Section 6-119.

D. CSE shall notify the parent's employer to enroll the child(ren) in the health care coverage available under the employer's plan. The employer shall comply with the court order or be fined up to two hundred dollars (\$200.00) for each month of noncompliance.

E. An employer may not be fined under this section if an employee fails to contribute his or her portion of a health insurance premium.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-122. Computation of child support obligations

Child support shall be computed in accordance with the Oklahoma child support guidelines.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Title 6, § 6–122

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### Library References

Child Support ⇨146.  
Indians ⇨137.  
Westlaw Topic Nos. 76E, 209.

C.J.S. Indians § 152.  
C.J.S. Parent and Child § 224.

### § 6–123. National Council review of child support guidelines

The guidelines shall be reviewed at least once every four (4) years by the National Council to ensure that the amounts provided for in the guidelines are adequate for the care and support of children within the Muscogee (Creek) Nation.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ⇨137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–124. Child support computation form and other standard forms

A. A child support computation form shall be signed by the Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided through an order obtained by CSE, a child support order summary form shall be prepared and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in Court a standard modification form shall be used and the Court Clerk shall forward a copy of the support order summary form to CSE and the order shall be included in the Muscogee (Creek) Nation, MCN Case Registry.

C. A standard agreed order form shall be used by all parents for any agreement submitted to the Court for approval as a part of the enforceable voluntary agreement process provided in Section 6–146 of this chapter.

D. The forms shall be prepared by the Office of Child Support Enforcement of the Muscogee (Creek) Nation and shall be published by the Court Clerk of the District Court of the Muscogee (Creek) Nation.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ⇨137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–125. Lien for arrearage in child support payments

A. An arrearage in payment of child support reduced to a court order of any past due payment or installment of child support that is a judgment and lien by operation of law may be a lien against the real and personal property of the person ordered to make the support payments.

B. Past due amounts of child support shall become a lien upon the real and personal property of the person ordered to make the payments at the time they

become past due. Past due child support which became due prior to the implementation of the MCN Case Registry shall also be a lien upon real and personal property if the obligor has been given notice and opportunity to contest the amount past due.

C. A certified copy of the judgment or order providing for the payment of an arrearage of child support or, subject to the provisions of subsection B of this section, a certified copy of a judgment or order providing for payment of child support pursuant to which a past due amount has accrued may be filed with the county clerk of the county where real property owned by the person obligated to pay support is situated and shall, from the time it is filed of record, become a lien upon the real property, or upon any real property which may be acquired by the person prior to the release of the lien, for the amount of the arrearage. The amount reflected in the official records of that agency shall constitute the amount of the lien on the obligor's property. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. A child support judgment shall become dormant as a lien upon real property five (5) years from the date the judgment is filed of record with the Court Clerk unless execution is issued and filed with the court clerk within five (5) years from the date the judgment is determined or last execution on the judgment is issued as required by law.

D. A judgment providing for the payment of an arrearage of child support or pursuant to which a past due amount has accrued shall become a lien upon benefits payable as a lump sum received from a workers' compensation claim of the person ordered to pay the support upon the filing of an affidavit and a certified copy of the judgment or order with the Administrator of the Workers' Compensation Court if a proceeding for compensation under the Workers' Compensation Act has been initiated by or on behalf of the obligor. If a proceeding for compensation has not been initiated, an affidavit and certified copy of the judgment or order shall be served by certified mail upon the entity responsible for paying workers compensation benefits to the absent parent or obligor ordered to pay child support.

E. The provisions of this section shall be available to a state or Tribal agency seeking to enforce a judgment for child support.

F. The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by Nation or state law.

G. A lien shall be released upon full payment of the amount of the arrearage.

H. The person entitled to support or CSE on behalf of its clients and recipients is authorized to enforce the liens created pursuant to this section and to execute releases or partial releases of the liens.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇄137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-126. Payment of child support; MCN Case Registry**

A. The Court may order child support payments to be made directly to the custodial parent, organization or institution having care and custody of the child(ren) or to CSE /the MCN Case Registry.

B. CSE shall have the authority to negotiate a lump sum payment of child support arrearages and interest due thereon. Consent of the payee and approval of the Court shall be required.

C. CSE shall maintain a case registry on all Title IV-D cases and all child support orders established or modified by CSE. Title IV-D cases are cases in which child support services are being provided by the Muscogee (Creek) Nation's Office of Child Support Enforcement.

D. All orders entered which establish paternity or establish, modify or enforce a child support obligation shall state:

1. An address of record for service of process in support, visitation and custody actions for all parties and custodians subject to the order;

2. The address of record may be different from the party's or custodian's

3. The address of record is subject to disclosure to a party or custodian upon request to CSE. CSE may refuse to disclose the address and location information if CSE has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child(ren).

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ⇄137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-127. Mailing of support payments; evidence of support payments; income assignment fee**

**A. Mailing of support payments.** If an order, judgment or decree directs that the payment of child support, temporary support or any similar type of payment be made through CSE, then it shall be the duty of CSE to transmit such payments to the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee, it shall be the duty of the payee to furnish CSE the new address in writing.

**B. Evidence of support payments.** A report of child support payments with a certificate of authenticity executed by the Court Clerk is admissible into evidence in Court or in an administrative proceeding as self-authenticated.

**C. Income assignment fee.** A fee of twenty-five dollars (\$25.00) may be charged and collected for any post-decree application to initiate an income assignment in addition to any other fees authorized by law. The person entitled to support is entitled to collect said fees paid pursuant to this subsection from the person obligated to pay support through civil proceedings.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Library References

Indians ☞137.  
 Westlaw Topic No. 209.  
 C.J.S. Indians § 152.

**§ 6-128. Past due payment or installment of child support to operate as judgment**

A. Any payment or installment of child support ordered by the Court by judgment, decree or administrative order is on or after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. Have the full force and effect of any other judgment of the Nation, including the ability to be enforced by any method available under the laws of the Nation to enforce and collect money judgments; and
2. Be entitled to full faith and credit as a judgment in the Nation and any other state.

B. A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien upon real property five (5) years from the date it is filed of record with the county clerk in the county where the property is located, unless execution is issued and filed within five (5) years from the date the judgment is determined or last execution on the judgment is issued as required by law:

1. Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full;
2. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. After the implementation of the MCN Case Registry, any amounts determined to be past due by CSE may subsequently be enforced by indirect civil contempt proceedings.

C. An arrearage payment schedule set by a Court or administrative order shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Library References

Indians ☞137.  
 Westlaw Topic No. 209.  
 C.J.S. Indians § 152.

**§ 6-129. Recording of costs in child support enforcement cases; assessment against nonprevailing party**

Costs incurred in a child support enforcement case in which a party is represented by an office operated by or for the benefit of CSE shall be recorded

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by the Court Clerk. The reasonable costs may be assessed by the Court against the non-prevailing party at the conclusion of the proceedings. Court-ordered child support payments and Court-ordered payments of suit moneys shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payment upon which the interest accrues.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

## § 6–130. Pleadings

Pleadings, motions, answers and other similar actions shall be in compliance with the Court Rules and Procedures as prescribed in Titles 14 and 27 of the Muscogee (Creek) Nation Code of Laws. All pleadings shall be signed by the party or attorney and shall contain the printed name, mailing address and phone number of said person.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ☞137, 511.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## § 6–131. Establishment of temporary orders

A. The Court shall establish temporary support orders in accordance with the child support guidelines. Temporary orders shall terminate when a final judgment is entered which establishes support or when the action is dismissed. A temporary order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification. Past due child support under the temporary order may be incorporated into a judgment when the final order is established. The Court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

B. In a civil action filed to determine paternity of a minor child, an interested party shall request the Court to enter a temporary order for support of the child pending a final determination of paternity. As in all cases the application for temporary support shall set forth facts to support the application and shall be verified by the party or entity seeking the order. The application and notice shall be served as in other civil cases. The Court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the alleged father, absent parent or obligor.

C. After service of the application and opportunity for hearing, the Court shall enter a temporary order for support if the court finds there is clear and convincing evidence of paternity, including but not limited to:

1. A genetic test which establishes a rebuttable or conclusive presumption of paternity pursuant to this Title;
  2. A notarized written statement acknowledging paternity of the child executed by the putative father;
  3. A presumption of paternity pursuant to the Paternity Determination Code within this Title; or
  4. Other evidence which establishes a high probability of paternity.
- D. CSE may request reimbursement of the legal fees, court cost and other fees as deemed appropriate by the Court.
- E. Any action of the Court arising from the provisions of Title 6 affecting the dissolution of marriage, protection of children from domestic violence or in any other action provided for under the Nation's law, wherein the Court has made a temporary order concerning the care, custody and suitable support or maintenance of the child(ren), CSE shall have the authority to enforce such order as set forth by the Court.
- F. CSE or the Court may establish a temporary child support obligation for minor child(ren) against both parents when:
1. The minor child(ren) is/are made ward(s) of the court as outlined under the Indian Child Welfare Act<sup>1</sup>;
  2. When the minor child(ren) are placed in foster care or in the home of a guardian or boarding school.
- G. The Court or CSE may deviate from the child support guidelines in Section 6-122 if it is found to be in the best interest of the children to be reestablished in the home of one or both parents.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

<sup>1</sup> 25 U.S.C.A. § 1901 et seq.

#### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6-132. Enforcement proceedings

- A. Attorneys for CSE may appear or initiate an action brought under this section on behalf of:
1. A recipient of Temporary Assistance for Needy Families; or
  2. A custodial parent not receiving Temporary Assistance for Needy Families, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by CSE.
- B. In any proceedings brought under this Act by CSE, the Court may, and unless it is not in the best interest of the child, shall, limit the issues in that proceeding to issues of child support and arrearage, unless issues of custody and visitation are specifically and affirmatively pled by the absent parent.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

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### Library References

Indians ☞137, 507.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–133. Modification

A. An order issued under authority of the Court may be modified in the following manner:

1. The child support obligation of an absent parent or obligor may, after entry of an order, be modified prospectively upon entry of an order by the Court. No support order may be modified retroactively;

2. Either parent may petition the Court for an order based on a showing of a material change in circumstances requiring the other parent to appear and show cause why the decision previously entered should not be prospectively modified;

3. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning parent on the other parent in the same manner as service in other civil cases;

4. A hearing shall be set not more than thirty (30) days from the date of service;

5. If the Court approves the modification, the order shall become effective from the date signed by the judge or at such later date as deemed appropriate by the Court.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–134. Paternity proceedings

Paternity proceedings shall be conducted in conformance with the requirements established in the Paternity Determination Code, Chapter 7 in this Title of the Muscogee (Creek) Nation Code of Laws.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Cross References

Paternity determination, court proceedings, see § 7–302.

### Library References

Indians ☞133, 137.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152.

### § 6–135. Termination of parental rights

Termination of parental rights shall not terminate the duty of a parent to support his/her child, unless so ordered by the Court, or agreed to by the parties and a written agreement is approved by the Court.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞134, 137.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152.

**§ 6-136. Adoption of a child**

A. Child support orders entered by the Court shall remain in effect until the Court receives notice that the final decree of adoption has been entered and at such time the adoptive parents are liable for child support. Child support arrearage shall be due and owing until paid in full, unless waived by the Court or waived by a notarized written agreement between the parties and signed by the Court.

B. Parties who adopt a child shall be responsible for the support of a child the same as a biological child.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137, 138.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-137. Support of stepchildren**

A husband is not legally responsible to maintain his wife's children by a former husband unless he adopted the child(ren); if he receives them into his family and supports them as a parent, the stepfather is not liable to them for child support.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-138. Public action for support of deceased parent's child**

If a parent chargeable with the support of a child dies, leaving it chargeable upon the Tribe, township or county, and leaving an estate sufficient for its support, CSE may petition the Court for an award of child support pursuant to the provisions of this Title from the parent's estate, and for this purpose may have the same remedies as any creditors against the estate, and against the heirs. Child support owed to a child(ren) shall be paid before any creditors or heirs.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

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### § 6–139. Bankruptcy

Current and past due child support owed on behalf of a child is not dischargeable by bankruptcy. Notice of Bankruptcy is to be filed with CSE.  
[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

#### Library References

Bankruptcy ⇨3365(13).	C.J.S. Bankruptcy § 1075.
Indians ⇨137.	C.J.S. Indians § 152.
Westlaw Topic Nos. 51, 209.	

### § 6–140. Filing pleadings and filing fee with court clerk

The Court Clerk of the District Court may charge any Tribal or state agency or attorneys, except child support enforcement offices operated by the Nation, the usual and customary fee for filing any document with the Court Clerk and may charge the customary fee for making copies of any document.  
[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇨137, 511.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–141. Judicial review

- A. The Supreme Court shall hear appeals.
- B. Any party may secure judicial review of a Court order made pursuant to this act by filing an appeal with the Supreme Court within ten (10) days after the decision is filed in the District Court.
- C. The appeal to the Supreme Court shall be an appeal to the record established before the District Court and shall be strictly limited to the issues of the paternity of the child(ren), the amount of public debt and child support liability of the absent parent or obligor.
- D. The Supreme Court shall not consider questions of facts, which have been determined by the District Court. The Supreme Court may reverse or modify the decision of the District Court if the findings are, as a matter of law:
  1. Clearly erroneous in view of the reliable, probative and substantial evidence in the record, when viewed in its entirety; or
  2. Arbitrary and capricious or characterized by abuse of discretion.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ⇨137, 540.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–142. Docketing orders

A true copy of any order made pursuant to the provisions of this Title may be filed with the Court Clerk. The Court Clerk shall docket the order in the

judgment docket. Upon docketing, the order shall have all the force and effect of a docketed order of the Court, including but not limited to the ability to enforce such an order pursuant to any applicable provisions included in the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137, 526, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6-143. Immediate income assignment and garnishment

A. Every order providing for child support shall include an immediate income assignment pursuant to this Act. Wage execution shall be utilized in all cases wherein an employer of a non-custodial parent, an absent parent or an obligor can be identified.

B. The Court may require the garnishment of earnings to enforce a child support order pursuant to the law of the Muscogee (Creek) Nation in cases wherein an immediate income withholding may not be an available remedy. Any income assignment for child support shall have priority over any prior or subsequent garnishment of the same wages.

C. The Court may make application to the Bureau of Indian Affairs, who administers the Individual Indian Money Account of a defendant who has failed to satisfy a money judgment from the Court, to obtain payment of the judgment from funds in the defendant's account.

D. When an immediate income assignment is issued a copy of the income assignment shall be served on the non-custodial parent, absent parent or obligor in the same manner prescribed in other civil cases. The non-custodial parent, absent parent or obligor may contest the issuance of the income assignment on the basis of a mistake of fact being an error in the amount of current or overdue support or in the identity of the alleged non-custodial parent. The Court shall set a hearing date within 30 days from the date of filing a petition to contest the income assignment.

E. If an employer fails to withhold wages in accordance with the provisions of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the non-custodial parent, absent parent, or obligor.

F. An employer who discharges a non-custodial parent, absent parent or obligor from employment, refuses to employ, or takes disciplinary action against any non-custodial parent, absent parent or obligor because of the withholding shall be subject to a fine to be determined by the Court.

G. Income shall not be subject to withholding if either the custodial parent or the non-custodial parent demonstrates, and the Court enters a finding that there is good cause not to require income withholding; or a signed written agreement is reached between the non-custodial parent and custodial parent,

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which provides for an alternative arrangement, and is reviewed and entered into the record of the Court.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞137, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 6-144. Voluntary income assignments**

A. An absent parent or obligor may execute a voluntary income assignment that meets the child support obligation calculated by the Court or CSE, or a voluntary agreement entered into pursuant to Section 6-146.

B. No employer shall refuse to honor a voluntary income assignment executed pursuant to this Title.

C. An assignment made pursuant to this section shall be binding upon the employer ten (10) days after service upon the employer of a true copy of the assignment.

D. Payments of monies pursuant to a voluntary income assignment shall serve as payment of all such wages assigned under any contract of employment.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞137, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 6-145. Modification, suspension or termination of income assignment orders**

A. The obligor or obligee may petition the court to:

1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞137, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 6-146. Enforceable voluntary agreement**

A. A custodial parent may enter into an agreement with the absent parent or obligor. This agreement shall include the following:

1. If paternity is at issue the agreement shall establish the paternity of the child(ren) and include the Social Security numbers of the parents;

2. The amount of child support which shall be paid by the absent parent or obligor to the custodial parent. In no circumstance will an agreement be approved or enforced which provides for a level of child support which is less than that provided for by the Muscogee (Creek) Nation child support guidelines established pursuant to Sections 6-118 and 6-122, unless the court makes specific findings that to enter such an order is in the best interest of the child(ren);

3. By the terms of the agreement, the absent parent or obligor must submit personally to the jurisdiction of the Court for enforcement and modification of the agreement, and consent to entry of an order in accordance with the terms of the agreement;

4. The amount, if any, of past due support owed by the absent parent or obligor and a schedule for repayment of that arrearage;

5. The agreement may be obtained by the parties through the services of the Nation.

B. In the event that no request for a hearing has been filed with the Court and no action has been filed before a Court, the voluntary agreement shall be submitted to CSE for approval and filed with CSE, which shall maintain the voluntary agreement in its records for possible modification and/or enforcement under the provisions of this Title.

C. In the event that a hearing has been requested from the Court, the voluntary agreement shall be submitted to the Court for its approval and enforcement under the provisions of this Title.

D. Such agreement may be entered into at any time prior to the issuance of a final order establishing paternity or establishing or modifying a child support obligation, either before or after service of process, or at any time while said order is still in effect. No agreement shall be entered into before the birth of the child unless the Court finds that there are special circumstances making it advisable to do so.

E. The voluntary agreement shall be submitted to CSE or to Court for approval and enforcement. After said agreement is approved by CSE or the Court, it shall be filed but judgment shall not be rendered unless there is a default of the child support payments agreed upon when, upon motion of CSE, a judgment shall be rendered and entered forthwith.

F. A paternity order established pursuant to a voluntary agreement of the parents has the same force and effect as a court order.

G. A parent who wishes to rescind a voluntary acknowledgment must do so, in writing to CSE, within sixty (60) days of signing the agreement.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Title 6, § 6–146

## CHILDREN AND FAMILY RELATIONS

### Library References

Indians ⇨137, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–147. Exemption from limitation

A. The statute of limitations is not applicable to the provisions of this Title, except as specifically noted herein.

B. No support lien, wage assignment or garnishment shall be deemed invalid or non-actionable due to the expiration of the statute of limitations on any action for failure to provide child support or maintenance for any child(ren).

C. No statute of limitations shall be effective to prevent the establishment, modification and/or enforcement of paternity and/or child support for any child from birth until the child reaches the age of eighteen (18) years or is otherwise emancipated.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ⇨137, 508.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–148. Government records

A. CSE may request and shall receive information from the records of all departments, boards, divisions, independent entities or agencies of the Nation, and the same are authorized to provide such information as is necessary for child support enforcement unless expressly prohibited by federal law.

B. Except as otherwise authorized by law, all files and records concerning the assistance and services provided by CSE or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, or parent location. Information may be released to public officials under rules adopted by CSE consistent with federal rules or regulations.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

### Library References

Indians ⇨137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

### § 6–149. Writs of assistance, specific performance and bonds

A. **Writ of Assistance.** Upon application by CSE, the Court may issue a writ of assistance to enforce any court order issued pursuant to this Title. Administrative and court orders recognized through comity have res judicata authority.

B. **Specific Performance.** The Court may specifically enforce any agreement made pursuant to this Act and approved by CSE and by the Court.

**C. Bonds.** The Court may require a party to submit a commercial, personal surety or other bond to satisfy the terms of an order issued pursuant to this Title, and enforce such bond in proceedings against the principal and sureties.

**D. Orders.** The Court, upon a showing that an absent parent or obligor has failed to obey a court order to pay child support or a public debt, will issue an order to show cause against the absent parent or obligor.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137, 538, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6-150. Persistent non-support

A. A person who persistently fails to provide child support without good cause when there is a present ability to pay and actual knowledge of legal obligation to provide support and he knows he is legally obligated to provide may be held in contempt of court and punished by a fine up to five hundred dollars (\$500.00) or by imprisonment of not less than thirty (30) days and not more than six (6) months; or by both such a fine and such term of imprisonment.

B. Willful failure to provide support for a child for a period of one year or in an aggregate amount exceeding five thousand dollars (\$5,000.00) is punishable by a fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00); or by imprisonment of not less than thirty (30) days and not more than one (1) year; or by both such a fine and such term of imprisonment.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

#### Library References

Indians ☞137, 639.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6-151. Authority to revoke or suspend licenses for noncompliance with child support order

A. The Court shall have the authority to order the revocation, suspension, non-issuance or non-renewal of an occupational, professional, business, or any recreational license or permit including, but not limited to, a hunting and fishing license; certificates of title for motor vehicles or the driving privilege; or any other authorization issued pursuant to the laws of the Muscogee (Creek) Nation for anyone who is in noncompliance with an order for support for at least ninety (90) days or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support.

B. When the Court is satisfied that all child support is paid in full or that the obligor has entered a payment plan and in all other ways is in compliance with other provisions of the child support order the court shall reinstate obligor's licenses.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## Library References

Indians ↻137, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 152.

**§ 6–152. Full faith and credit**

A. In accordance with 28 U.S.C. § 1738B, the District Court of the Muscogee (Creek) Nation shall grant full faith and credit and cause to be enforced any judgment for child support from other Tribal courts, state courts and administrative bodies.

B. Court and administrative orders, judgments or decrees of other Indian nations and Tribes, states or federal agencies, which relate to child support enforcement are enforced in the Nation under the doctrine of full faith and credit. Certified foreign orders will be enforced as an order of the Nation where the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order, personal service of process was made on such person and the administrative or court proceedings offered substantial justice to such person. For purposes of this act, the Court shall have the authority to consider court and administrative orders, judgments or decrees of a foreign jurisdiction for comity recognition.

C. A foreign order is certified by reasonable proof that the document tendered to the Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. A certified stamp issued by a clerk of the court or custodian of record, or a court seal, is sufficient evidence of authenticity.

D. Unless defects in jurisdiction are apparent on the face of the foreign order the burden is upon the person against whom it is to be enforced to contest the validity of the order. Upon a failure to respond to notice and the opportunity to contest the order, the Court may enforce it as a Muscogee (Creek) Nation order.

E. Where a foreign order is invalid by reason of lack of personal jurisdiction in the court of the issuing jurisdiction, the Court may adopt all of its provisions as an original order of the Court.

F. A foreign order may be modified by the Court if the Court has jurisdiction to make such a child support order pursuant to subsection G; and the court of original jurisdiction no longer has continuing, exclusive jurisdiction over the child; or each individual contestant has filed written consent with the court of continuing, exclusive jurisdiction for the Court to modify the order and assume continuing, exclusive jurisdiction over the matter.

G. If neither the non-custodial parent, the custodial parent nor the child reside within the issuing foreign court jurisdiction, the party seeking to modify, or to modify and enforce a child support order issued by another state or Tribe shall register that order in the MCN Case Registry and petition the Court to modify and enforce an order for child support.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

**Library References**

Courts ☞98.5.  
Indians ☞137.

Westlaw Topic Nos. 106, 209.  
C.J.S. Indians § 152.

**§ 6-153. Responsibility of minor parents**

Minor parents of a minor child shall be responsible for the financial support of their child. The Court may deviate from the child support guidelines if the minor parents are attending high school or the Court makes a finding that the parents of the minor parents are responsible for the financial support of the minor child. If the Court deviates from the guidelines established herein, once the minor parent emancipates, the Court may modify the order in accordance with Section 6-133 of this Title.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 6-154. Life insurance**

The Court may require the absent parent or obligor to provide life insurance on himself/herself through their employer or private agency at a reasonable cost designating the minor child(ren) the beneficiary of the policy.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Insurance ☞2423.

Westlaw Topic Nos. 209, 217.  
C.J.S. Indians § 152.

**§ 6-155. Severability**

In the event that any provision or provisions of this act are determined by a court of competent jurisdiction to be invalid for any reason, the remaining provisions of the act shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been a part of the Act.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

## **CHAPTER 7. PATERNITY DETERMINATION CODE**

### **Subchapter**

1. General Provisions
2. Natural Mother and Paternity Establishment
3. Paternity Proceedings
4. Paternity Support

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **Section**

- 7-101. Title.  
7-102. Purpose.  
7-103. Definitions.

#### **§ 7-101. Title**

This act shall be entitled the Paternity Determination Code.

[Added by NCA 07-328, § 1, added eff. Dec. 26, 2007.]

#### **§ 7-102. Purpose**

The purpose of this act is to:

- A. Establish guidelines for paternity proceedings held in the Muscogee (Creek) Nation courts.
- B. Preserve and strengthen the ties between a father and child.
- C. Provide Indian children with known paternal family lines.
- D. Assure that Indian children are aware of their paternal family lineage, heritage and background.
- E. Ensure that a father is held accountable for his actions and properly provides for his child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

#### **Library References**

Children Out-of-Wedlock $\S\S$ 30 to 32.	C.J.S. Children Out-of-Wedlock $\S\S$ 47, 71 to 72, 94, 96 to 97.
Indians $\S$ 133.	C.J.S. Indians $\S$ 150.
Westlaw Topic Nos. 76H, 209.	

#### **§ 7-103. Definitions**

All terms used in this chapter shall be defined as listed in Chapter 1, § 1-102 of this Title, unless defined below:

- A. “Attorney” means the Attorney from the Muscogee (Creek) Nation Office of Child Support Enforcement.
- B. “CSE” means the Muscogee (Creek) Nation Office of Child Support Enforcement.
- C. “Custodian” means a person or institution that has charge or custody of a child.

- D. "Court" means the Muscogee (Creek) Nation District Court.
  - E. "Court Clerk" means the Muscogee (Creek) Nation District Court Clerk.
  - F. "Guardian" means one who has the legal authority and duty to care for a child.
  - G. "Husband" means a married man; a man who has a lawful living wife.
  - H. "Legal father" means the man recognized by law as the male parent of a child. A man is the legal father of a child if:
    - 1. he was married to the child's natural mother when then child was born,
    - 2. he recognized or acknowledged the child as his own, or
    - 3. he has been declared the child's natural father in a paternity action.
  - I. "Mother" means a woman who has given birth to or legally adopted a child. The terms includes a pregnant woman who has not yet given birth.
  - J. "Natural father" means the man who impregnated the child's natural mother. Also, referred to as biological father.
  - K. "Paternity proceeding" means a court proceeding to determine whether a person is the father of a child (especially a child born out of wedlock), usually initiated by the mother in an effort to obtain child support.
  - L. "Presumed father" means the man presumed to be the father of a child for any of the following reasons:
    - 1. he was married to the child's natural mother at the time the child was conceived or born,
    - 2. the child was born during a valid marriage,
    - 3. the man married the mother after the child's birth and agreed either to have his name on the birth certificate or to support the child, or
    - 4. the man welcomed the child into his home and held out the child as his own.
  - M. "Putative father" means the alleged biological father of a child born out of wedlock.
  - N. "Scientifically reliable genetic test" means a test, usually involving DNA identification or tissue-typing, for determining whether a given person is the biological parent of the child.
  - O. "Supreme Court" means the Muscogee (Creek) Nation Supreme Court.
- [Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**SUBCHAPTER 2. NATURAL MOTHER AND  
PATERNITY ESTABLISHMENT**

**Section**

- 7-201. Presumption of maternity.
- 7-202. Presumption of paternity.
- 7-203. Additional presumption of paternity.
- 7-204. Person entitled to dispute presumption and time limit.

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### Section

7–205. Establishing paternity.

7–206. Rescinding paternity.

### § 7–201. Presumption of maternity

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

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

#### Library References

Indians ⇄133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

### § 7–202. Presumption of paternity

Except as otherwise provided by law, a man is presumed to be the natural father of a child for all intents and purposes if:

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

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

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

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

E. Statistical probability of paternity is established at ninety-eight percent (98%) or more by scientifically reliable genetic tests,

F. The presumption of paternity created pursuant to this section may be disputed pursuant to Section 7–204 of this Title.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

#### Library References

Children Out-of-Wedlock ⇄43.

Indians ⇄133, 520(2).

Westlaw Topic Nos. 76H, 209.  
 C.J.S. Children Out-of-Wedlock § 109.  
 C.J.S. Indians §§ 150 to 179.

**§ 7-203. Additional presumption of paternity**

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

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

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Children Out-of-Wedlock ⇔43.	C.J.S. Children Out-of-Wedlock § 109.
Indians ⇔133, 520(2).	C.J.S. Indians §§ 150 to 179.
Westlaw Topic Nos. 76H, 209.	

**§ 7-204. Person entitled to dispute presumption and time limit**

- A. The presumption of paternity created pursuant to Section 7-202 of this Title may be disputed only by the husband or wife, the putative father or their descendants.
- B. If a child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child’s legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone.

[Added by NCA 07-328, § 1, added eff. Dec. 26, 2007.]

**Library References**

Children Out-of-Wedlock ⇔43.	C.J.S. Children Out-of-Wedlock § 109.
Indians ⇔133, 520(2).	C.J.S. Indians §§ 150 to 179.
Westlaw Topic Nos. 76H, 209.	

**§ 7-205. Establishing paternity**

Paternity may be established as follows:

- A. Completion of the Affidavit Acknowledging Paternity by the father and mother and filed with the District Court and CSE. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding. The affidavit shall be prescribed by CSE and made available to the Court. The affidavit shall include the following information to be valid:

- 1. A written statement by the mother consenting to the assertion of paternity and stating the name of the father and the name of the child;

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2. A written statement by the father stating that he is the natural father of the child; and,
  3. The social security numbers of both parents.
- B. Scientifically reliable genetic test that indicates a probability of paternity greater than ninety-eight percent (98%) for a specific man,
  - C. District Court order or administrative court order, or
  - D. As otherwise provided by law.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ⇄133.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

**§ 7–206. Rescinding paternity**

A. The affidavit acknowledging paternity may be rescinded by the mother or the acknowledging father within the earlier of:

1. sixty (60) days after the affidavit acknowledging paternity is signed, and a signed rescission of Affidavit Acknowledging Paternity form is filed with the Court and CSE, or
2. the date of a judicial proceeding relating to the child, including but not limited to, a proceeding to order child support, in which the signatory is a party.

B. An affidavit acknowledging paternity may be challenged in Court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. If the person signing the Affidavit Acknowledging Paternity is determined in Court not to be the father of the child, then the Court shall dismiss any pending Court collection proceedings against the challenger and he shall be released from any Court-ordered payments for the support and maintenance of the child.

C. If the mother was married at the time of conception or birth and her husband is not the natural father of the child, the husband may sign a Husband’s Denial of Paternity form which must be filed along with the Affidavit Acknowledging Paternity. The form shall be prescribed by CSE and made available to the Court.

D. A person signing an affidavit of paternity prior to attaining the age of eighteen (18) years shall be allowed to challenge said affidavit in District Court. A petition challenging the paternity affidavit must be filed by the person who acknowledged paternity prior to his nineteenth (19th) birthday. A challenge must be supported by a scientifically reliable genetic test and the standard for proving paternity shall be the same as that found in Section 7–205 of this Title.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

**Library References**

Children Out-of-Wedlock ☞33.	C.J.S. Children Out-of-Wedlock §§ 47, 80 to 83.
Indians ☞133.	C.J.S. Indians § 150.
Westlaw Topic Nos. 76H, 209.	

**SUBCHAPTER 3. PATERNITY PROCEEDINGS**

**Section**

- 7-301. Jurisdiction and venue.
- 7-302. Court paternity proceedings.
- 7-303. Burden of proof.
- 7-304. Paternity complaint.
- 7-305. Scientifically reliable genetic testing.
- 7-306. Joinder of defendants.
- 7-307. Order of defendant to appear.
- 7-308. Court order and maintenance of the child.
- 7-309. Change of name of the child.
- 7-310. Costs and fees.
- 7-311. Statute of limitations.
- 7-312. Appeal.

**§ 7-301. Jurisdiction and venue**

A. Jurisdiction shall be according to the provisions established in Chapter 1 of Title 27<sup>1</sup> of the Muscogee (Creek) Nation Code Annotated.

B. The Court shall have jurisdiction over all parties involved in an action to establish paternity if the child is a citizen of a federally recognized Indian Tribe or eligible for citizenship in said Indian Tribe and one of the parties is residing within the territorial boundaries of the Nation.

C. The venue for a paternity proceeding shall be the Court located in Okmulgee, Oklahoma.

D. The Court may exercise personal jurisdiction over a person, whether or not a resident within the Muscogee (Creek) Nation jurisdiction, who is the subject of a paternity proceeding.

E. When a person who is subject to the jurisdiction of the Court is outside the jurisdictional boundaries of the Muscogee (Creek) Nation, the person may be served outside of the jurisdictional boundaries of the Muscogee (Creek) Nation by any method that is authorized by the laws of the Muscogee (Creek) Nation and/or the laws of the state of residency.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

<sup>1</sup> Title 27, § 1-101 et seq.

**Library References**

Indians ☞133, 501.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 150 to 179.

**§ 7-302. Court paternity proceedings**

A. A paternity proceeding shall be brought in the District Court.

B. A mother, putative father, guardian, or custodian of a child, CSE, the Prosecutor, a public or private agency or authority chargeable with the support

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of the child, or the child himself/herself may bring a civil proceeding in the District Court to determine the paternity of the child and the amount of child support due and owed for the maintenance of the child.

C. A paternity proceeding shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18).

D. If the scientifically reliable genetic testing indicates a probability of paternity greater than ninety-eight percent (98%) for a man, then the Court shall enter an order establishing the man as the father.

E. After the paternity proceeding, the Court shall enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 6-124 of this Title, which shall be filed with all orders establishing paternity. The child support order summary form shall be submitted to the MCN Case Registry as established in Section 6-126 of this Title. The Court may further make provisions for custody and visitation based upon the best interests of the child.

F. In a proceeding brought under this section by CSE, the Court may, and unless it is not in the best interests of the child, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. All contested issues of custody and visitation shall be addressed by the Court.

G. In all actions to determine the paternity of a child or of a person younger than age nineteen (19) that would affect the citizenship rolls of the Muscogee (Creek) Nation, notice must be served on the Muscogee (Creek) Nation Citizenship Board at least thirty (30) days prior to the date of the hearing on the petition for determination of paternity. However, this section shall not apply to paternity actions brought by the Muscogee (Creek) Nation.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ⇌500.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 7-303. Burden of proof**

The issues of paternity shall be tried before the Court and the petitioning party shall bear the burden of proof. The Court shall not make a determination of paternity unless the evidence is clear and convincing and supports a determination of paternity.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ⇌133, 520(2).  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 7-304. Paternity complaint**

A. If the woman has delivered a child or is pregnant with a child and the paternity of that child is unknown, then a paternity complaint may be made and shall include the following:

1. The paternity complaint shall be in writing and duly verified by any person, to the Court stating the facts and charging the proper individual as being the father of the child in question.

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

B. The death of the mother or the putative or alleged father shall not hamper an action which is brought under this section, and it shall not prevent the bringing of an action for the support of the child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ☞133, 511.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 7-305. Scientifically reliable genetic testing**

A. The Court may order the mother, child, or any other individual necessary to submit to scientifically reliable genetic testing to make a determination of paternity.

B. The Court shall order scientifically reliable genetic tests on all defendants who are duly served, including defendants who fail to answer or appear.

C. The Court has the authority to enforce a subpoena or order to appear to submit to scientifically reliable genetic testing, or any other order entered pursuant to this chapter.

D. If any party refuses to submit to genetic testing the Court may resolve the question of paternity against such party or enforce its order if the rights of others and the interest of justice so require unless such individual is found to have good cause for refusing to cooperate.

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

F. The compensation of each expert witness appointed by the Court or called by a party and costs of tests required shall be fixed at reasonable amounts by the Court. Said compensation and costs shall be paid as the Court

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shall order. The Court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe. All additional testing must be paid for in advance by the party requesting the additional tests. The Court may order that, after payment by the parties, said compensation and costs may be taxed as costs in the action. The Court shall not assess costs against CSE.

G. All parties to the action shall be mailed a copy of the genetic test results by certified mail to the last known address of the parties.

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

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

### Library References

Children Out-of-Wedlock ⅈ42.  
Indians ⅈ133.  
Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 76 to 79,  
102 to 111.  
C.J.S. Indians § 150.

## § 7-306. Joinder of defendants

A. All men who have had sexual intercourse with a woman during the possible time of conception of the child for whom paternity is unknown may be joined as defendants in an action to determine the paternity of said child.

B. When more than one defendant is named or joined in the paternity proceeding, the Court shall order all defendants to appear.

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

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

E. After the paternity proceeding has concluded, the Court shall dismiss the paternity proceeding against the other defendants.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

### Library References

Indians ⅈ133, 509.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 7-307. Order of defendant to appear**

When the paternity complaint is filed, the Court shall order the defendant to appear and show case why the Court should not determine him to be the father.

A. If the defendant fails to appear, then the Court shall upon the findings of the Judge enter an order determining paternity, support, custody and visitation.

B. If the defendant appears and does not admit paternity, then the Court shall enter at that time an order directing scientifically reliable genetic testing to determine paternity.

C. Any administrative or court order of any jurisdiction determining paternity of a child which is entered due to the failure of the putative or alleged father to appear or answer and a default judgment is granted in said action and the determination is not supported by genetic testing meeting the standard as set forth in Section 7-205 of this Title, shall not be used as the sole basis for eligibility for citizenship in the Muscogee (Creek) Nation.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ☞133, 510.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

**§ 7-308. Court order and maintenance of the child**

A. If the defendant is determined by the Court to be the father of the child, then he shall be charged with the maintenance of the child in such sum, and in such manner as directed by the Court and in accordance with the Child Support Enforcement Code located in Chapter 6 of Title 6 of this Code, and with the costs of the suit and execution may issue, immediately, and afterwards from time to time for the collection of any sum ordered to be paid.

B. The Court shall require the defendant to secure the performance of the order of the Court, in such manner as directed by the Court, and the Court shall have the power to punish, as for contempt, any disobedience by the defendant of an order issued by the Court under this section.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ☞133, 137.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150, 152.

**§ 7-309. Change of name of the child**

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

B. If the Court determines after the hearing that it is in the best interest of the child to bear the paternal surname, then the Court shall enter an order to

## **Title 6, § 7–309**

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that effect which shall include findings of fact as to each issue raised by the parties.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞133.  
Westlaw Topic No. 209.  
C.J.S. Indians § 150.

## **§ 7–310. Costs and fees**

In a paternity proceeding, the Court may award and tax costs and fees, and apportion them between the parties. In an action brought by the Nation, costs and fees shall be awarded in accordance with the Court guidelines.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞133, 660, 661.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

## **§ 7–311. Statute of limitations**

A paternity action may be brought pursuant to Section 7–302 of this Title before the child reaches the age of eighteen (18), or if the action is brought by the child himself/herself, until the child reaches the age of nineteen (19).

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞133, 508.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

## **§ 7–312. Appeal**

Either party may appeal the Court decision to the Supreme Court. The appeal shall be made in the same manner and with like effect as in other actions in the Court in accordance with Section 2–120 of Title 27 of this Code.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

### **Library References**

Indians ☞133, 540.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 179.

## **SUBCHAPTER 4. PATERNITY SUPPORT**

### **Section**

- 7–401. Liability of father to support the child.
- 7–402. Temporary support of child during pendency of paternity proceeding.
- 7–403. Liability of father to support mother.

**§ 7-401. Liability of father to support the child**

A. An individual legally determined to be the father of a child is liable for the support and education of that child to the same extent as the father of a child born in wedlock.

B. An individual legally determined to be the father of a child shall be ordered to pay all or a portion of the costs of the birth according to his ability to pay as well as reasonable expenses of providing for the child pursuant to those guidelines established in Title 6, Chapter 6 of this Code. No birthing costs shall be assessed to the father if birthing services were provided by Indian Health Services unless federal law or regulations provide otherwise.

C. Copies of bills for pregnancy, childbirth and scientifically reliable genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for genetic testing on behalf of the child.

D. The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in Title 6, Chapter 6 of this Code.

E. Liability for child support provided before a determination of paternity may be imposed only for the five (5) years preceding the filing of the action.

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

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ☞137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 7-402. Temporary support of child during pendency of paternity proceeding**

A. When a paternity proceeding is filed in Court, any interested party may request the Court to enter a temporary order for support of the child pending a final determination of paternity.

B. The application for temporary support shall state the facts supporting the application and shall be verified by the party or entity seeking the temporary support order.

C. The application for temporary support and notice of temporary support hearing shall be served as in other cases.

D. Temporary child support during the pendency of a paternity proceeding is available if the Court finds clear and convincing evidence of paternity at the temporary order hearing, including, but not limited to:

1. A scientifically reliable genetic test which establishes a rebuttable or conclusive presumption of paternity,

2. A notarized written statement acknowledging paternity of the child executed by the putative father,

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3. A presumption of paternity pursuant to Sections 5-203, 5-204 and 5-205 of this chapter, or

4. Other evidence which establishes a high probability of paternity.

E. A temporary support order shall be established in accordance with the child support guidelines pursuant to Title 6, Chapter 6 of this Code.

F. A temporary support order terminates when a final judgment is entered which establishes support or when the action is dismissed.

G. A temporary support order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ⇐137.  
Westlaw Topic No. 209.  
C.J.S. Indians § 152.

**§ 7-403. Liability of father to support mother**

A. A man legally determined to be the father of a child is liable for the pregnancy-related expenses of the mother.

B. The father of a child born out of wedlock shall be liable for the reasonable expenses of the mother during the period of her pregnancy, confinement and recovery, whether or not the child is born alive.

C. Liability for the pregnancy-related expenses of the mother shall be enforced only within three (3) years after the birth of the child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**Library References**

Indians ⇐131, 133.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 150 to 176.

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