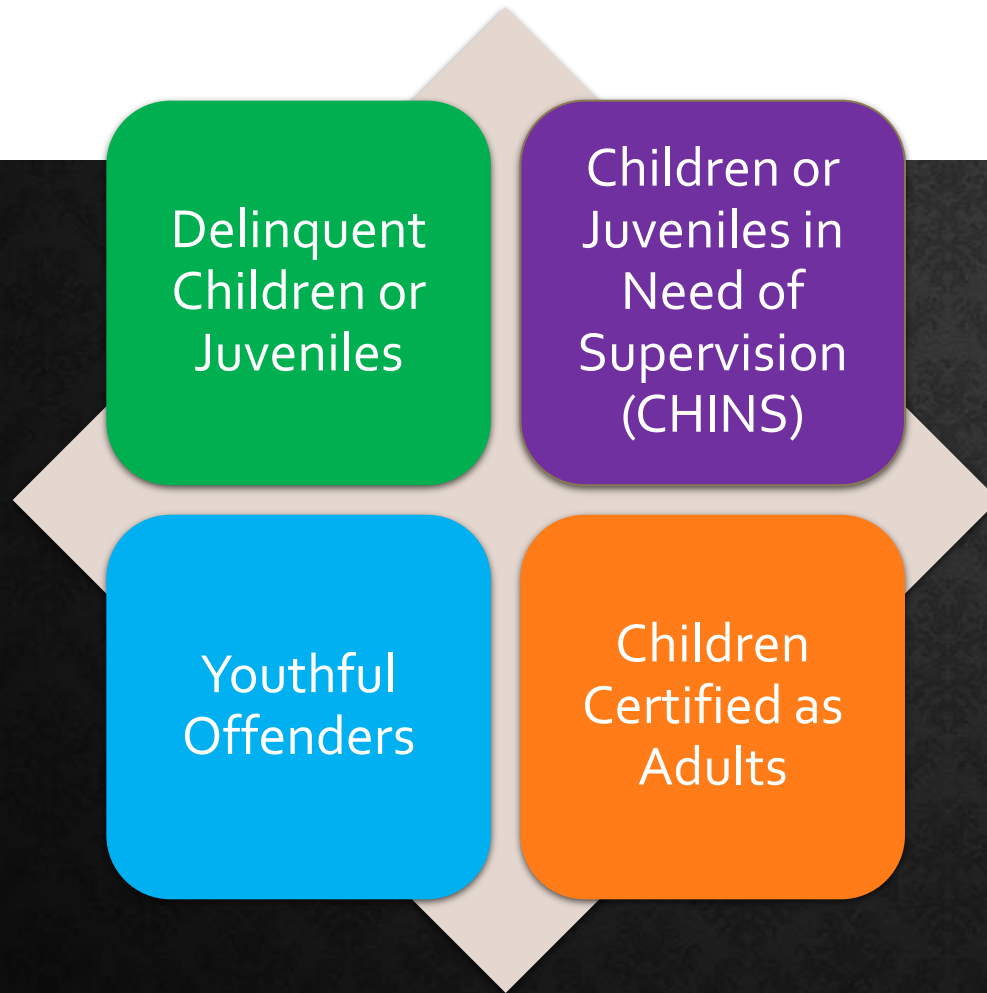




# JUVENILE DELINQUENCY 101

Hon. Marion D. Fry  
Associate District Judge  
LeFlore County

Hon. Rebecca J. Gore  
Associate District Judge  
Mayes County



# SUBJECTS OF JUVENILE CODE

# WHO IS A DELINQUENT CHILD OR JUVENILE?

A **delinquent child** or **juvenile** is a **person under 18** years of age **who has violated:**

- a **state law, municipal ordinance**, or a **court order** (other than a traffic, wildlife, or boating law or ordinance) , or
- who has **habitually violated traffic or boating laws**. [Habitually is not defined by the statute.]

**10A O.S. § 2-1-103(6) and (13)**

# WHO IS CHILD IN NEED OF SUPERVISION (CHINS)?

“Child or juvenile in need of supervision” (CHINS) means a juvenile who:

- has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,
- is willfully and voluntarily absent from his or her home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,
- is willfully and voluntarily absent from school, if the juvenile is subject to compulsory school attendance, or
- has been served with an ex parte or final protective order

10A O.S. § 2-1-103(8)

# LEGISLATIVE INTENT

The intent of the Legislature is to promote public safety and reduce juvenile delinquency through fair and just means, that:

1. Recognize the unique characteristics and needs of juveniles;
2. Give juveniles access to opportunities for personal and social growth;
3. Maintain the integrity of substantive law and developing individual responsibility;
4. Provide individualized treatment and best practice for rehabilitation and reintegration;
5. Preserve and strengthen family ties; including improvement of home environment;
6. Remove a juvenile from the custody of parents if the welfare and safety of the juvenile or the protection of the public would be endangered;
7. Secure for any juvenile removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile in becoming a responsible and productive member of society; and
8. Provide procedures through which the provisions of the law are executed and enforced, and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

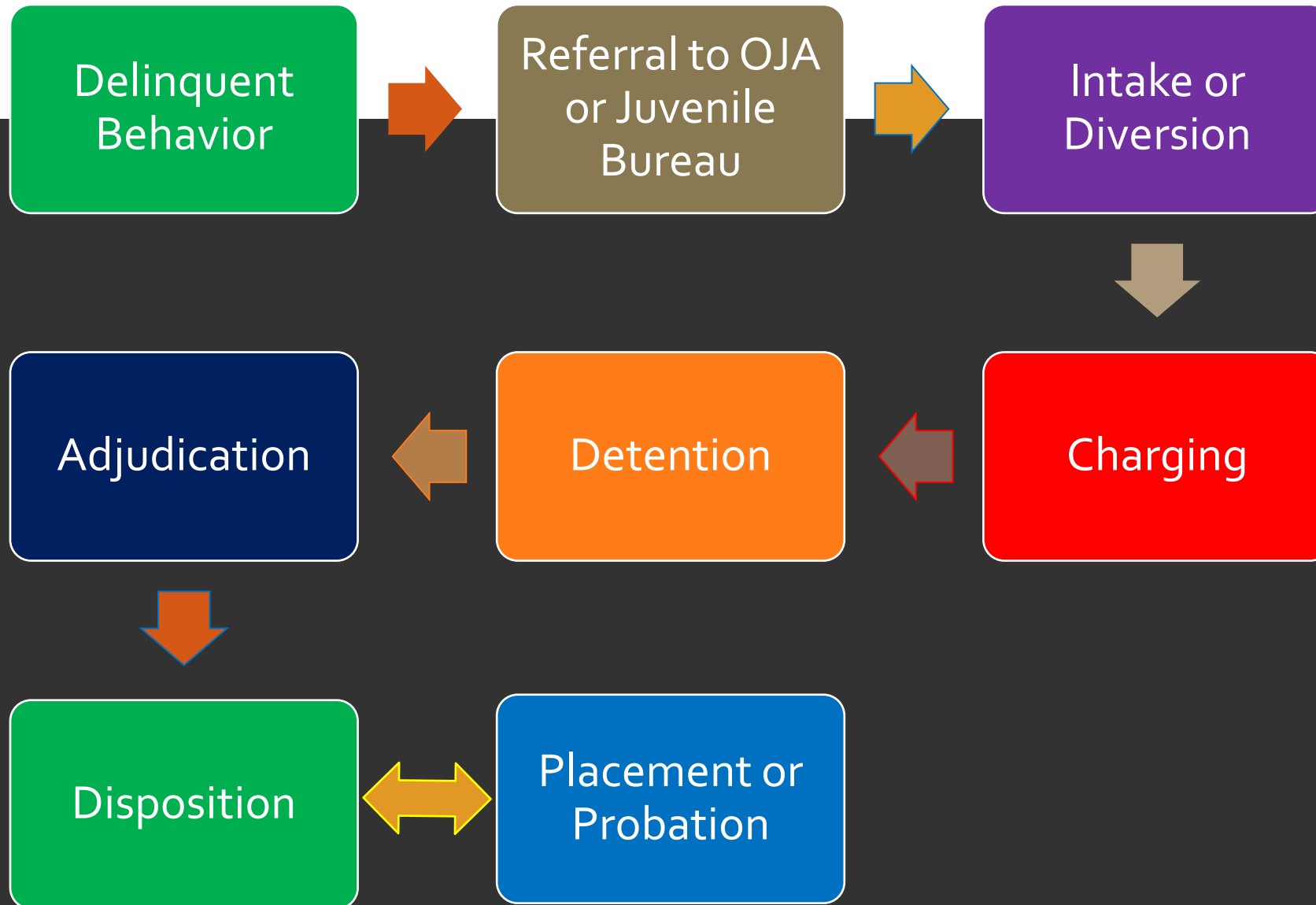
10A O.S. § 2-1-102

# TERMINOLOGY



- Arrest } **Taking into Custody**
- Preliminary Inquiry } **Intake**
- Informal Adjustment } **Deferred Prosecution**
- Plea } **Stipulation**
- Conviction } **Adjudication**
- Sentencing } **Disposition (Re-disposition)**
- Defendant } **Juvenile or Respondent**
- Rules & Conditions } **Treatment Plan**
- Jail } **Detention**
- Incarceration } **Placement**
- Criminal } **Delinquent or Juvenile or Status Offender**

# STAGES OF JUVENILE DELINQUENCY CASE



# TAKING A CHILD INTO CUSTODY

## 1. By a peace officer (No Court Order)

- For **any criminal offense** where an adult could be arrested **without** a warrant
- If the child is **voluntarily absent** from home **without consent** (runaway)
- If the child's **surroundings endanger** his/her welfare

## 2. By Peace Officer or Court Employee (No Court Order)

- If the child is a **runaway** or in **unsafe conditions**
- If the child **refuses to provide** identifying information
- May be taken to a **court-designated facility** if unsafe to return home
- Facility must **notify** parent or guardian

10A O.S. § 2-2-101(A)



# TAKING A CHILD INTO CUSTODY

## 3. By Court Order (Requested by District Attorney)

- Supported by a **sworn affidavit**
- Must show **probable cause** of a **crime** or **probation/parole violation**

## 4. By Court Order (Medical or Behavioral Health Need)

- When **treatment is needed** and **parent/guardian is unavailable** or **unwilling to consent**

## 5. Pursuant to Protective Order

- **Emergency** or **final order** under the Protection from Domestic Abuse Act

**Note: A child is not considered in custody of the Office of Juvenile Affairs when taken into custody under this section.**

**10A O.S. § 2-2-101(A)**

# INITIAL CUSTODY OPTIONS

## Child may be:

- **Detained,**
- **Held temporarily** by a peace officer or police department employee, or
- **Released** to a responsible adult (parent, guardian, attorney, etc.)

## Release requires:

- **Written promise** to bring the child to court if a petition is filed, and
- **Assumption of responsibility** for any future delinquent acts

10A O.S. § 2-2-101(B)

# LEGAL CONSEQUENCES FOR NONCOMPLIANCE

- **Misdemeanor** if:
  - The responsible adults **fails to comply** with the written promise
  - The adult **refuses to assume custody** after being notified
- **Penalties**
  - Up to **6 months in the county jail,**
  - Up to a **\$500.00 fine, or**
  - **Both fine and imprisonment**

**10A O.S. § 2-2-101(B)**

# DETENTION PROCEDURES

If detained, **child must be taken:**

- Immediately **before a judge in county of detention**
- Or to a **designated detention facility, emergency facility, or host home**

If **no local judge is available:**

- **Report to presiding judge** of the judicial administrative district
- Child cannot be held without a **detention hearing** beyond:
  - **Next judicial day, or**
  - **Second judicial day (with good cause and court order)**

**10A O.S. § 2-2-101(B)**

# DETENTION HEARING REQUIREMENTS

**Detention hearing** must determine **probable cause**

- Child must be:
  - **Physically present**, or
  - Appear via **two-way video communication** (image and sound)
- If no judge is available:
  - Report to **any judge** in the judicial administrative district

**10A O.S. § 2-2-101(B)**

# RELEASE OR CONTINUED DETENTION

The Court may:

- **Release** the child
  - To a parent, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court
- Or **detain** the child
- **Reasonable bond** must be set if child is continued in detention
- Detention location is **court-designated** and **subject to further order** of the court

**10A O.S. § 2-2-101(B)**

# DETENTION FACILITIES

Juveniles may **ONLY** be housed in juvenile detention facilities or placements:

- “juvenile detention facility” means a facility which is secured by locked rooms, buildings and fences, and meets the certification standards of the Office and which is **entirely separate from any prison, jail, adult lockup, or other adult facility**, for the temporary care of children. A juvenile detention facility shall not be considered a correctional facility ....”

10A O.S. § 2-1-103(21)

# DETENTION

## General Rule

A child **may be detained** in **detention only** if it is **necessary** to assure the **appearance** of the child, or for the **protection** of **the child** or **the public**.

## Age-Based Restrictions

- **NO** child **12 years** of age or younger **may be detained** unless:
  - **ALL alternatives** have been exhausted;
  - Charged with a **felony**; **AND**
  - **Detention** indicated by **risk-assessment screening**
- Same rule for **13-** and **14-year-olds**

10A O.S. § 2-3-101(A)



# DETENTION TIME LIMITS

## Time limits for detention

- Preadjudicatory or predisposition detention:
  - Initial order: Maximum 30 days
  - Extension: Up to 60 additional days (for “good and sufficient cause”)
  - Murder cases: Additional 60 days possible
  - Secure detention orders: Maximum 15 days, extendable by 15 more after hearing—on application of the district attorney.
  - Total preadjudicatory/predisposition detention: Maximum 90 days (unless murder then 150 days)

10A O.S. § 2-3-101(A)

# DETENTION HEARING REQUIREMENTS

- **Child must be present** at extension hearings
- Child may participate via **telephone conference communication**
- Court **may**:
  - **Continue secure detention**;
  - Order **alternative detention**; or
  - **Release the child** from detention

**10A O.S. § 2-3-101(A)**

# DETENTION ELIGIBILITY

- **Escapee** from delinquent placement;
- **Fugitive** from another jurisdiction;
- **Seriously assaultive** or **destructive** towards others or self;
- **Charged with** criminal offense that would be a **felony**;
- **Charged with** a criminal offense that would be a **misdemeanor, AND**
  - a. On **probation**
  - b. On **preadjudicatory supervision**
  - c. On **release status**;
- **FTA** or **reason to believe** the child will **FTA**;
- **Warrant**

# PROHIBITED DETENTION SETTINGS

No **child** alleged or adjudicated as:

- **Deprived**
- In need of supervision
- Minor in need of treatment



No **transportation** or **association** with **criminal** or **dissolute persons**

**10A O.S. § 2-3-101(A)(2)**

# APPROPRIATE PLACEMENT ALTERNATIVES

Child taken into custody as:

- Deprived
- In need of supervision
- Minor in need of treatment

May be placed in:

- Shelter care
- Foster care
- Behavioral health treatment facility
- Release to parent or responsible party

10A O.S. § 2-3-101(A)(3)

# DETENTION AS SANCTION

A delinquent **child** who has **violated a court order**, who has **had an order revoked**, or who has **had an order modified** may be placed in:

- OJA-designated **sanction detention bed**
- OJA-approved **sanction program**

**10A O.S. § 2-3-101(C)**



# DETENTION BED PRIORITIZATION

If any **empty** detention **bed** is **not available**:

- **Priority** should be given **to offender** with a **higher priority status**:
  - If the **offender with the higher priority status** would be **more of a danger** to the **public** than the **juvenile** with the **lower priority status**.



**10A § 2-3-101**

# DETENTION FACILITY IS PRIMARY PLACEMENT

- Juvenile **detention facilities** shall be the **initial placement** for **all persons under 18** years of age. (If detained).
- Currently **no adult jails** are **licensed to hold juveniles**.

**10A § 2-3-101(E)**



# TEMPORARY DETENTION FOR 6 HOURS OF LESS

Juveniles being detained for:

- the commission of a felony,
- an escapee from a juvenile secure facility (not secure detention), or
- from an OJA group home

may be detained for up to 6 hours (not including transportation time) in:

- a jail certified by the State Department of Health (none are certified),
- a police station, or
- similar law enforcement offices

by law enforcement for the purposes of identification, processing, or arranging transfer to a secure detention facility.

10A § 2-3-101(G)(2)

# JURISDICTION IN CHINS CASES

- Jurisdiction lies in the county where the child:
  - Resides
  - Is found
  - Is alleged/found to be in need of supervision
- Court also has jurisdiction over:
  - Parents,
  - Guardians,
  - Stepparents, or
  - Adults in the home (if served or appear)
- Jurisdiction may continue until child turns 18
- Case may be transferred to another county with judicial approval



10A O.S. § 2-2-102(B)

# CHILD IN NEED OF SUPERVISION (CHINS)

- In need of supervision cases can be **adjudicated**
  - The child in need of supervision is entitled to a **jury trial** on the issue with **6 jurors**. **10A O.S. § 2-2-401**
- A child in need of supervision **cannot be detained** in any **adult facility**
  - They can be **temporarily held in police custody**, a **community intervention center**, an **emergency resource home**, or **released to their parent or guardian**. **10A O.S. § 2-2-101**
- An adjudicated child in need of supervision shall be **reviewed** by the Court **at least every six (6) months** until the **conditions** of adjudication **have been corrected**. **10A O.S. § 2-2-504**
- An **adjudicated child** in need of supervision **committed to the Office of Juvenile Affairs**, the Office may place the child in the **home of the child**, the **home of a relative** of the child, **foster home**, **group home**, **transitional living program**, **independent living program**, **community-based setting**, **rehabilitative facility** or **child care facility** under the operation of or licensure of the state, or in a **state school for individuals with intellectual disabilities** if eligible for admission thereto. **10A O.S. § 2-7-502**

# JURISDICTION IN DELINQUENT CASES

- Jurisdiction lies in the county where the delinquent act occurred
- Court also has jurisdiction over:
  - Parents,
  - Custodians/Guardians,
  - Stepparents, or
  - Adults in the home (if served or appear)
- May retain jurisdiction until child turns 19 years of age
- Filing deadlines:
  - Before age 18
  - Within 1 year after 18th birthday (felony)
  - Within 6 months after 18th birthday (misdemeanor)

**10A O.S. § 2-2-102(B)**

# PRELIMINARY INQUIRY OR “INTAKE”

Preliminary Inquiry or Intake is a mandatory, preadjudicatory interview of:

- the juvenile and,
- if available, the parents, legal guardian, or other custodian of the juvenile
- Performed by OJA or Juvenile Bureau to determine:
  - whether a juvenile comes within the purview of the Oklahoma Juvenile Code,
  - whether non-adjudicatory alternatives are available and appropriate, and
  - if the filing of a petition is necessary

10A O.S. § 2-1-103(26)

# PURPOSE OF PRELIMINARY INQUIRY OR “INTAKE”

- Determine if further court action is needed in the interests of the public or the child.
- If no further action is needed and agreed by the DA, an informal adjustment may be made without filing a petition. (Much like a deferred prosecution agreement.)

10A O.S. § 2-2-104

# INFORMAL ADJUSTMENT AGREEMENT

An agreement where the child agrees to fulfill certain conditions in exchange for not having a petition filed. Informal adjustment may occur only when:

- Prima facie jurisdiction is established,
- The child admits to the facts,
- Consent is obtained from:
  - DA
  - Parent/guardian/custodian, or counsel for child, if any, and
  - Child

10A O.S. § 2-2-104(C)

# INFORMAL ADJUSTMENT

Information adjustment must be **completed in 6 months**, but can be **extended** for an **additional 6 months** and **shall**:

1. Be **voluntarily entered** by **all parties** (child, parent, DA);
2. Be **revocable by the child at any time** by written revocation;
3. Be **revocable by the intake worker** for **noncompliance** or **commission of new crime**;
4. **Cannot be used as evidence** against the child **at any adjudication hearing**;
5. Be executed **in writing**;
6. **Becomes part** of child's **juvenile record**.

**10A O.S. § 2-2-104(D)**

# CHINS DIVERSION SERVICES

Diversion services shall be offered to children who are at risk of being the subject of a child-in-need-of-supervision (CHINS) petition.

## Purpose:

- Provide immediate response to families in crisis.
- Divert children from formal court proceedings.
- Targeted at children at risk of being the subject of a Child-in-Need-of-Supervision (CHINS) petition.

10A O.S. § 2-2-104.1(A)

# CHINS DIVERSION SERVICES

## Eligibility:

- At-risk children who are at risk of CHINS petition.
- First-time misdemeanor offenses.
- Diversion/services must be offered before a CHINS petition is filed or custody is assumed.

## Providers:

- Outside agencies, juvenile bureaus, court employees, or a combination.

**10A O.S. § 2-2-104.1(A)**

# PETITION

- If a child has been detained, the petition must be filed and summons issued within 5 judicial days from the date of assumption of custody, or custody must be relinquished.
- The petition must be attached to and served with the summons.
- No further pleadings are required after the petition.
- Motions or pleadings do not delay the adjudication hearing.
- The petition may be amended before adjudication by order of the court.
- Amendments must not change the substance or adjudication category.
- Additional time may be granted to ensure a fair hearing.

10A O.S. § 2-2-106

# REQUIREMENT OF THE PETITION

- The petition shall be entitled “IN the matter of \_\_\_\_\_, an alleged delinquent (or a child alleged to be in need of supervision).”
- The petition must be verified, may be upon information and belief, and must include:
  1. Specific facts which bring the child under the Juvenile Code
  2. Child’s name, age, residence
  3. Parents’ names and residences
  4. Legal guardian’s name and residence (if applicable)
  5. Custodian’s name and residence
  6. Nearest known relative, if no parent or guardian
  7. Relief requested
  8. Law under which child is charged + witness list

**10A O.S. § 2-2-106(D)**

# DEFERRED ADJUDICATION

- **Adjudication** proceedings may be **deferred for 180 days**, can be extended for an additional 180 days if making progress, if:
  - The **juvenile** is **alleged** to have **committed** a **misdemeanor** or **felony**;
  - The **juvenile stipulates** to the **allegations**;
  - The **juvenile** has **not** been **previously adjudicated** as **delinquent**.
- If the offense is a **felony**, the **DA must agree** before the court can defer adjudication.
- During the deferral, the juvenile can be ordered to **pay restitution**, work a **treatment plan**, undergo **mental health treatment**, perform **community service**, **drug/alcohol treatment**, etc.
- If the child **successfully completes** the deferred adjudication, it is **dismissed with prejudice**. If **unsuccessful**, the juvenile is **adjudication** and **disposition plan** created.

10A O.S. § 2-2-404

# ADJUDICATIONS

- **Delinquent cases** must be **heard separately** from cases against **adults**.
- **Adjudication** must occur **within 30 days (if detained)** unless **extended for good cause**.  
(Does not apply to jury or non-jury trial.)
- The **rules of evidence apply**.
- The **hearings** are **private except**:
  - **Victims, victim representatives, guardians, or other designated persons** may be present.
  - **Second of subsequent adjudications** shall be **public** hearings.
  - **Court may open hearings for educational purposes** (identities are protected)
- The **Court may order** that **specific testimony** be **heard in private**.
- The **Court may not exclude** any **relative, guardian, or victim representative** who is **not subject to the rule of sequestration** during the **testimony of the victim**.

# ADJUDICATIONS

In a bench (non-jury) or jury trial:

- The **child** has the **right to remain silent** and **must be advised** before he/she **testifies**.
- The **child** has the **right to cross-examine witnesses** and **other trial rights** like adults.
- If the **petition is sustained**, the **child becomes a ward of the court**, then a **disposition** hearing is **held**.
- If the **petition is not proven**, it is **dismissed**, and the **child is discharged**

**10A O.S. § 2-2-402**

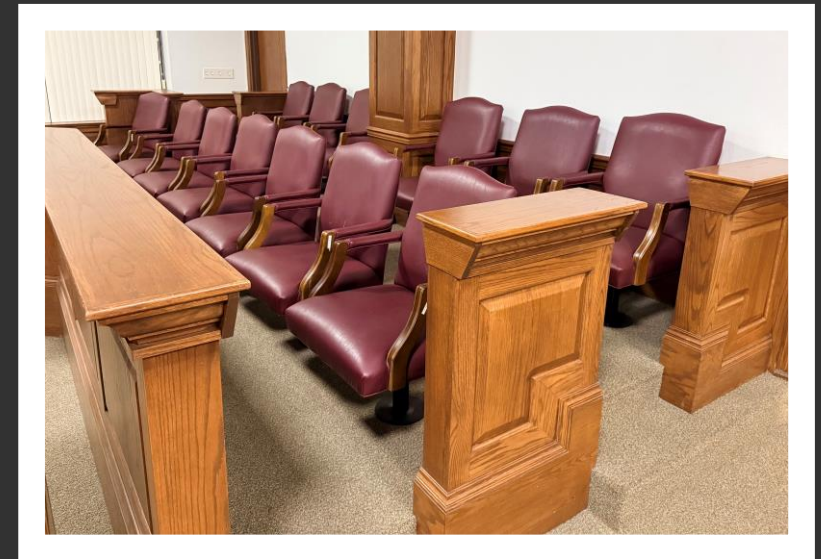


# ADJUDICATION JURY TRIAL

Any person entitled to service of summons or the State **may demand a jury trial**, which **shall be granted**. Persons entitled to summons:

- Person having custody of the child
- Child over 12
- Parent
- Guardian/next friend
- Any other person designated by the Court
- Adjudication trials shall consist of **6 jurors**.

**10A O.S. § 2-2-401**



# DISPOSITION

- Must be held **within 40 days** after **adjudication**.
  - “Dispositional Hearing” means a **hearing to determine** the order of **disposition** which should be made with respect to a **juvenile adjudged to be a ward of the court**. **10A O.S. § 2-1-103(14)**
- **All relevant evidence is admissible** in a disposition hearing.
- **Oral and written reports** may be **admitted** and **relied upon** even though they would not have been competent evidence for an adjudication hearing/trial.
- The **DA, attorney for the child, parents/guardians**, must be **advised about reports** prepared for the court and have an **opportunity to controvert them**.
- The **disposition order shall include** the liability and accountability of the parents for the care and maintenance of the child (**child support**) **unless custody remains with the parents**.
- **Disposition** hearings may be **continued** to receive **additional reports** and **other evidence**.
- The **child** may be **detained** or **released** from detention **during any continuance**.

# DISPOSITION

- Recommendation for disposition is due within 30 days after adjudication.
- The recommendation shall include the child's eligibility for:
  - Probation,
  - Placement in community residential treatment, or
  - Commitment to OJA.
- If probation is recommended, an individual treatment and service plan shall be provided with the recommendation.
- If custody with OJA or court-ordered placement in other residential treatment, the treatment plan is due within 30 days after disposition.

**10A O.S. § 2-2-502**

# TREATMENT PLAN

- The **treatment plan** shall be **based on** a **comprehensive assessment** and **evaluation**:
  - of the **child** and **family**
  - that **identifies** the **priority of needs** of the child for **rehabilitation** and **treatment**
  - and **identifies** the **needs** of the **parent/guardian** for **services** that would improve their ability to provide **adequate support, guidance,** and **supervision** of the child.
- The **process** should consider:
  - The **detention risk assessment** decision,
  - The **intake preliminary assessment,**
  - Any **comprehensive assessment** for **substance abuse treatment services, behavioral health services, intellectual disabilities, literacy services,** and **other education and treatment services.**

**10A O.S. § 2-2-502**

# TREATMENT PLAN REQUIREMENTS

The **treatment plan must include:**

1. **Child & family history**, including **problems leading to the adjudication**.
2. **Eligibility** for:
  - a. **probation**,
  - b. **treatment**, or
  - c. **commitment**.
3. **Specific services** for the **child** (education, vocational education, drug/alcohol treatment, etc.).
4. **Services for parents/guardians to remediate/alleviate conditions that led to adjudication**.
5. **Performance criteria** that will **measure progress** toward **completion of the treatment plan**.
6. **Attorney's name** and **business address** (if any).

**10A O.S. § 2-2-502**

# TYPES OF DISPOSITION ORDERS

1. **Probation** – *With or without supervision*; in the home of the child or in the custody of a suitable person; may include a fee (up to \$25/month) in counties with a juvenile bureau.
2. **Return to Parent/Guardian** – If consistent with the child's welfare; *court may issue orders regarding conduct to be followed to adults in the home* to prevent the child from continuing to be delinquent or in need of supervision.
3. **Commitment to Private Institution/Agency** – Must be licensed; court sends summary of child's background.
4. **Counseling or Community-Based Services** – As deemed necessary by the court.
5. **Commitment to Office of Juvenile Affairs (OJA)** – For an *indeterminate* period.
6. **Parental Responsibility** – If the adult contributed to the child's behavior, they may be ordered to participate in treatment or placement plans.

10A O.S. § 2-2-503

# SPECIAL PROVISIONS OF DISPOSITION ORDERS

- **Truancy-related cases**

- Court may require school district to evaluate child for learning disabilities, hearing or visual impairments.
- Counseling and treatment may be ordered for both child and parents by school district, county, OJA, or a private individual/entity.

- **Children 16+ years old**

- Court must assess transition to independent living needs.

- **Children adjudicated solely for truancy**

- Cannot be removed from parental custody or placed in an institution.

- **A child may be adjudicated both deprived and delinquent if facts support it.**

10A O.S. § 2-2-503

# FEES, SPECIAL CONDITIONS, AND SANCTIONS

The court may order:

- **Victim Compensation Assessment** – May be ordered for criminally injurious conduct.
- **Community Service** – Without compensation; state/subdivisions not liable for claims.
- **Restitution** – May be ordered from child, parent(s), or guardian:
  - Victim notified of hearing; verified statements considered.
  - Lump sum or installment payments; may substitute or combine with community service.
  - Restitution may become a civil judgment at age 18.
- **Fines** – Equivalent to adult penalties
  - Funds go to **Work Restitution Fund: 10A O.S. § 2-2-503(A)(7)(d)**
- **Driving Privileges** – May be **canceled or denied**.
- **Detention Options** – Up to 5 days, weekend detention, house arrest, electronic monitoring.
- **Sanctions for Probation Violations** – **Including detention**.
- **Juvenile Drug Court** – Court may require participation
- **Dismissal or Termination of Jurisdiction** – Allowed any time for good cause.

# INITIAL OR CONTINUED REMOVAL OF A CHILD

Court **must find** that continuation of the child in the home **is contrary to the welfare** of the child. The **order shall include** either:

1. A determination that **reasonable efforts have been made** to prevent the removal;
2. A determination that **absence of efforts** to prevent the removal were **not** made because of an **emergency and** the **removal was necessary** for the protection of the child and the protection of the public; or
3. A determination that **reasonable efforts** to prevent the removal of the child or to reunify the family are not required.

**10A O.S. § 2-2-105**

# REVOCAION, MODIFICATION, AND REDISPOSITION

The **court may revoke** or **modify** a disposition order and may order **redisposition**. The **juvenile has the following rights** regarding revocation, modification, and redisposition:

1. **Notice** – The child and the parent/guardian shall be served with notice of the redisposition at least 5 days prior to a hearing;
2. **Bench Trial** – Redisposition is heard without a jury and must be proven by a **preponderance of the evidence**;
3. **Right to counsel** – The child has the right to an attorney, to **present evidence**, and to **confront any witnesses**;
4. **Appeal** – Any modification, revocation or redisposition removing the child from the custody of a parent or guardian shall be subject to review on appeal;
5. **Bail** – The child has the right to bail pending appeal if placed in detention

**10A O.S. § 2-2-503(F)**

# REVOCAATION, MODIFICATION, AND REDISPOSITION

6. **Reasonable Efforts** – The court shall not enter an order removing the child from the custody of a parent or legal guardian unless the court finds that **reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the home** or that **an emergency exists which threatens the safety of the child** and that:
- a. such removal is **necessary to protect the public,**
  - b. the **child is likely to sustain harm** if not immediately removed from the home,
  - c. allowing the child to remain in the home is **contrary to the welfare of the child,** or
  - d. immediate **placement of the child is in the best interests of the child.**

**10A O.S. § 2-2-503(F)**

# INDIRECT CONTEMPT OF COURT

Willful violation of a court order may result in:

- **Fine** up to \$300
- **Detention** up to 10 days
- Or **both**

**10A O.S. § 2-2-503(G)**



# REVIEW HEARINGS

- **Every 6 months:** All delinquent and CHINS **disposition orders** must be **reviewed** until:
  - Conditions are corrected, or
  - Parental rights are terminated.
- **Out-of-home placements:** Reviewed every **6 months**; **permanency hearing** required within **12 months** and **annually thereafter**.

## **Permanency Plan Options:**

- **Return** to parents or family.
- **Continue** out-of-home care.
- **Terminate parental rights** and pursue adoption or guardianship.
- **Long-term care** or **independent living** (exceptional cases).

**10A O.S. § 2-2-504**

# REVIEW HEARINGS

## Court Must Determine:

- Whether reasonable efforts were made to reunite the family.
- If reasonable efforts have failed or are not feasible, whether efforts are being made for alternate permanent placement.
- For children 16 or older, whether independent living services are provided.
- OJA must notify the court and DA of placement changes (within 1 business day if emergency).
- Foster/pre-adoptive/relative caregivers must receive notice and opportunity to be heard at review hearings and permanency hearings. This does not grant standing to the caregiver as a party to the case.

10A O.S. § 2-2-504

# CERTIFICATION AS AN ADULT

- If a juvenile is charged with an offense that would be a felony if committed by an adult, the court on its own motion or the DA may request a preliminary hearing to determine whether prosecutive merit exists.
- If prosecutive merit exists, the preliminary hearing shall be continued for a certification study (investigation).



10A O.S. § 2-2-403

# PROSECUTIVE MERIT STANDARD OF PROOF

- Pursuant to *M.L.S. v. State*, 1991 OK CR 9, 805 P.2d 665, the Oklahoma Court of Criminal Appeals found that the **standard of proof** in a **prosecutive merit** hearing is a “**reasonable likelihood**” that the offender committed the crime.
- The standard is **less than the probable cause** standard of a preliminary hearing.
- For **judicial economy**, the **prosecutive merit hearing can be used in place of the preliminary hearing** once the case is filed as adult case, so you may want to keep that in mind to keep from having two hearings. (Establish PC at prosecutive merit hearing.)

# CERTIFICATION STUDY/INVESTIGATION

During the investigation or certification study, OJA prepares the report regarding:

1. The seriousness and nature of the offense;
2. Whether the offense was against persons or property (degree of personal injury; greater weight given to crimes against persons);
3. Sophistication and maturity of the juvenile along with psychological evaluation;
4. Prior record and history;
5. Public safety concerns;
6. Likelihood of rehabilitation by use of juvenile procedures and facilities; and
7. Whether the offense occurred during escape from a facility.

# CERTIFICATION HEARING

- At the certification hearing the court will consider the certification study conducted by OJA and determine by **clear and convincing evidence** whether to certify the juvenile as an adult.
- The **criminal proceeding** must be commenced within **30 days** of the written order of certification.
- The **juvenile case remains pending** until the criminal case has **commenced**.
- If the **criminal proceeding** is not commenced **within 30 days**, the **certification lapses** unless **stayed pending an appeal**. The **court** then proceeds with the **juvenile proceeding**.
- If the **criminal case** is commenced **within 30 days**, the juvenile case **is dismissed**.

**10A O.S. § 2-2-403**

# COMPETENCY—RAISING THE ISSUE

- May be **raised at any time** by:
  - The **child's attorney**
  - The **district attorney**
  - The **court**
  - Office of Juvenile Affairs (via Motion to Intervene if child is in custody)
- **If the child is not represented**, the court must **immediately appoint counsel**.
- All **proceedings are stayed**, **except** for filing the petition or information.



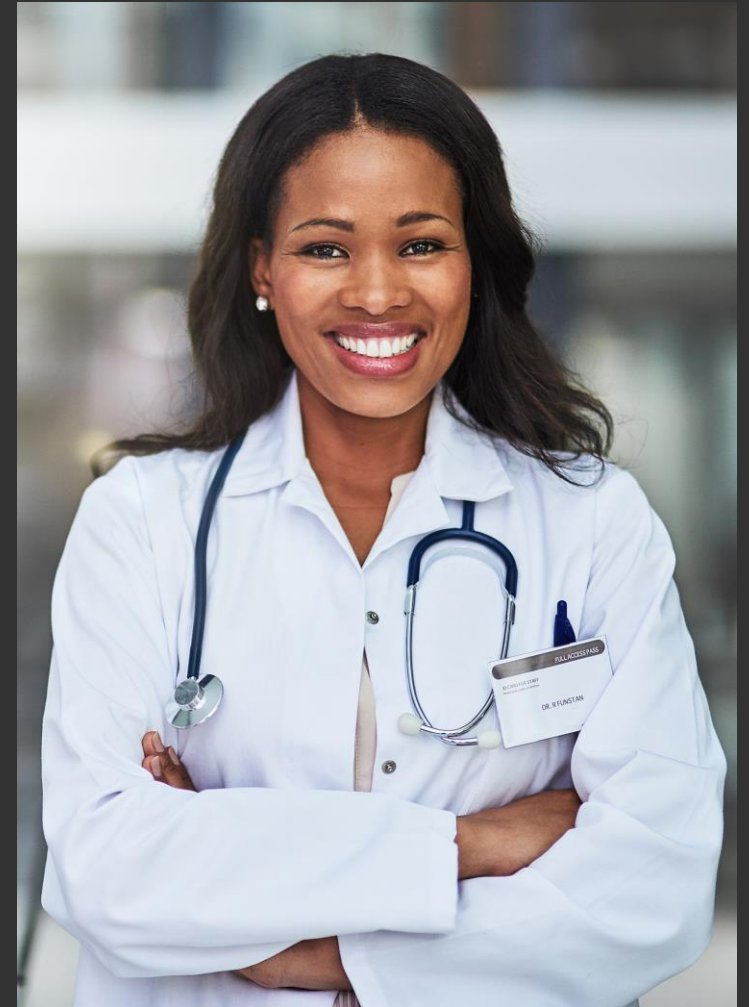
# PRESUMPTION OF COMPETENCY

- **Presumption of competency** applies to children **13 years or older**.
- Presumed competent **unless** found to be:
  - Developmentally disabled,
  - Developmentally immature,
  - Intellectually disabled, or
  - Mentally ill
- This **presumption is rebuttable** and **applies only** to competency determinations.
- **Agreement Without Evaluation:**
- The court may find a child **incompetent without a hearing or evaluation** if:
  - The **DA, child's attorney**, and
  - **At least one parent**, legal guardian, or guardian ad litem
  - **All agree** to the determination.

**10A O.S. § 2-2-401.2**

# COMPETENCY EVALUATION PROCEDURES

- **If Evaluation is Ordered:**
  - Must be in the **least-restrictive environment**, considering:
    - Public safety
    - Best interests of the child
- **Evaluator Access & Responsibilities:**
  - **Court provides:**
    - Access to confidential/public records
    - Petition or information
    - Contact info for judge, DA, child's attorney, and guardians
  - **District Attorney provides:**
    - Police reports and background info
  - **Child's attorney provides:**
    - Police reports
    - Educational, medical, psychological, neurological records

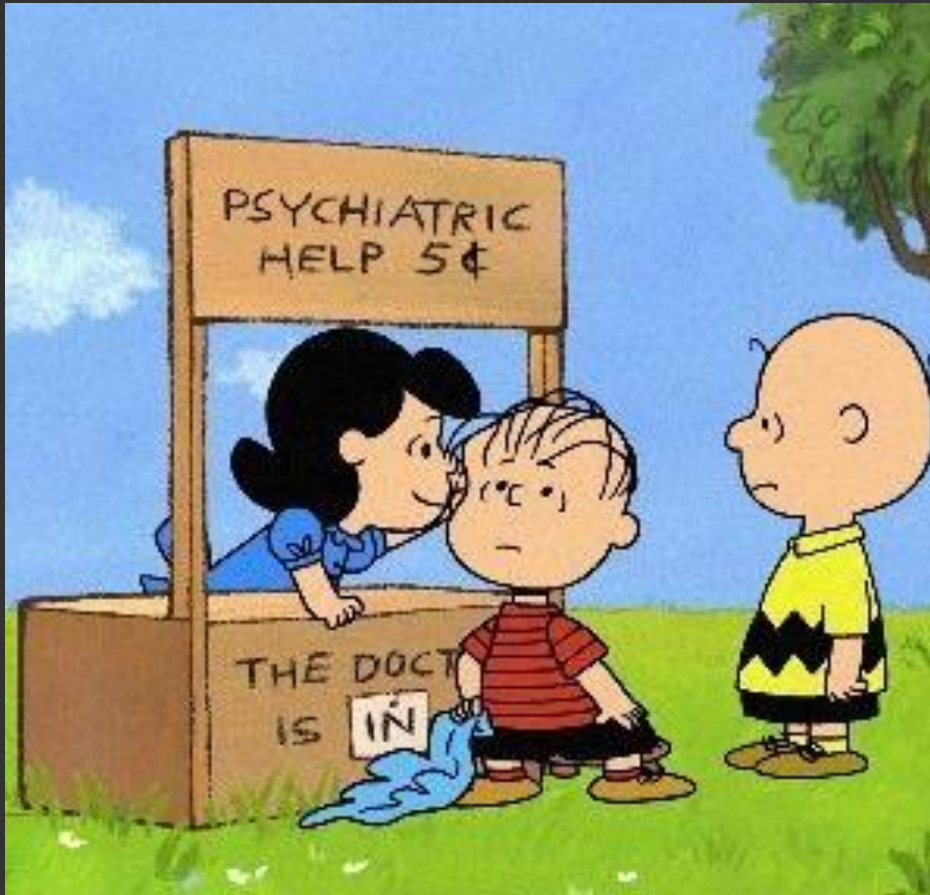


# CREDENTIALLED FORENSIC EVALUATOR

- An evaluation ordered by the court shall be **conducted** by a **credentialed forensic evaluator**.
- The **Oklahoma Commission on Children and Youth (OCCY)** establish procedures for the training and qualifications of the evaluators and maintain a list of **credentialed evaluators**. **Submit** information for juvenile competency evaluations to: **[okjuvcompetency@occy.ok.gov](mailto:okjuvcompetency@occy.ok.gov) (405-606-4900)**
- A psychologist, psychiatrist, or physician who is not credentialed may be appointed if exigent circumstances require the evaluator to have specialized expertise to not possessed by the credential evaluators.

**10A O.S. § 2-2-401.4**

# COMPETENCY EVALUATION REPORTS



## Report Requirements:

- Written competency evaluation reports shall be filed within 30 days of the date of appointment.
- For good cause, the court may extend the deadline for reports an additional 30 days.
- Report must include:
  - Whether the child is capable of understanding the proceedings or assisting in his/her defense.
  - No opinions on guilt, culpability, or offense details.
  - Statements made during the evaluation cannot be used to determine guilt.

**10A O.S. § 2-2-401.5**

# COMPETENCY QUESTIONS

A **competency evaluation** shall address the following questions:

1. Whether the child is able to **understand and appreciate the charges** and their **seriousness**;
2. Whether the child is able to **consult with an attorney** and **rationally and factually assist** in his or her **defense**;
3. Whether the child can **understand and reasonably participate** in the **proceedings**;
4. If the answer to question 1, 2 or 3 is no, whether the child can **attain competency within a reasonable time** pursuant to Section 7 of this act if provided **with a course of treatment, therapy, or training**;
5. Whether the child poses an **imminent threat to the life or safety** of **him or herself** or **others**; and
6. Whether the child is **mentally ill** or is a **minor in need of treatment** as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

# COMPETENCY EVALUATION REPORTS

Competency evaluation report shall include:

1. **Evaluation methods** (psychometric tests administered, records reviewed, and identity of persons interviewed);
2. **Background information**, (history of educational performance, psychiatric history, and family history);
3. **Mental status exam results**; and
4. **Psychiatric symptoms** or **cognitive deficiencies**, including a **diagnosis**, if one has been made.

Competency conclusions:

**If competency is impaired**: but the child **may be rendered competent** by reasonable accommodations, the report should include recommended accommodations.

**If a substantial probability exists** that the child may **attain competency** in a **reasonable** time: the report **shall** contain a **recommendation for the least restrictive setting** for services for the child to regain competency and both for the safety of the child and the public.

**10A O.S. § 2-2-401.5**

# COMPETENCY HEARINGS

## Timing & Procedure:

- Hearing must be held **within 15 judicial days** of receiving the evaluator's report.
- May be **continued for good cause**.
- Hearing may be conducted via **teleconference or videoconference**.

## Evidence & Participation:

- Evaluator's **report is admissible**.
- Evaluator may be **called and cross-examined**.
- **Court must notify** all parties if it contacts the evaluator for clarification and **allow participation**.

**10A O.S. § 2-2-401.6**

# CONSIDERATION AND BURDEN OF PROOF

## Court's Considerations:

- All admitted evaluation reports.
- Any additional evidence from the DA or child's attorney.

## Burden of Proof:

- Based on preponderance of the evidence.
- Moving party bears the burden.
- Court must issue a written determination within 10 judicial days after the hearing.

## Important Limitations:

- A child cannot be found incompetent solely because:
  - They are receiving or have received in-patient mental health treatment, or
  - They are taking or have taken psychotropic medications, even if they may become incompetent without them.

10A O.S. § 2-2-401.6

# EFFECTS OF COMPETENCY DETERMINATION

- Child **competent** → **proceedings are resumed**
- Child **is incompetent** and **cannot attain competency** within 6 months for misdemeanor or 1 year for a felony → the **petition is dismissed** and:
  - Refer the matter to DHS and request whether a deprived action should be filed
  - Refer the matter to the DA for consideration of a CHINS petition or Minor in Need of Mental Health and Substance Abuse Treatment proceeding
- Child is **incompetent** but **likely to regain competency** within 6 months for a misdemeanor or within 1 year for a felony, → **proceedings are stayed** until the child is competent or the time expires.

**10A O.S. § 2-2-401.7**

# COMPETENCY ATTAINMENT (RESTORATION)

If child is **incompetent** but **may attain competency**:

- The court shall **stay the proceedings** and **order**:
- **Competency attainment services** based on evaluation recommendations;
  - Services must be in the **least restrictive environment**;
  - Child's **parents/guardian** to **contact** a court-appointed provider by a **specified date**;
  - **Public safety** and **bests interests of the child** shall be **considered**;
  - **If the child has been released** on temporary orders and **refuses or fails to cooperate**, the **court may modify** the order to require a more appropriate setting.
  - **Child not required to participate** in services **longer than required** to attain competency

**10A O.S. § 2-2-401.7**

# COMPETENCY ATTAINMENT (RESTORATION)

Within 10 days after the court orders competency attainment, the court shall deliver to the provider:

- a. the name and address of the child's attorney,
- b. a copy of the child's petition or information,
- c. a copy of the competency evaluation report,
- d. the name, address, and phone number of the child's parents or legal guardian,
- e. the name of the Office of Juvenile Affairs employee or Juvenile Bureau employee responsible for the intake, supervision, or custody of the child, if adjudicated,
- f. the name of the Department of Human Services caseworker, if any, and
- g. any other relevant documents or reports concerning the child's health that have come to the attention of the court.

# COMPETENCY ATTAINMENT (RESTORATION) PLAN

- The provider must submit a competency attainment plan to the court within 10 judicial days after the child contacts the competency attainment provider.
- The court shall provide copies of the plan to the DA, child's attorney, GAL, OJA/Juvenile Bureau, and the child's parents/guardian.
- Progress reports shall be provided by the provider to the court every 90 calendar days or when services are terminated. The reports shall contain:
  - a. the services provided to the child, including medication, education and counseling,
  - b. the likelihood that competency will be restored within 6 months for a misdemeanor or 1 year for a felony, and
  - c. the progress made towards the goals and objectives for competency attainment.

10A O.S. § 2-2-401.7

# COMPETENCY REPORTS

Within 3 judicial days, the provider shall report any of the following to the court:

1. Lack of cooperation from the child;
  2. That the current setting is no longer the least-restrictive means (the provider must include a danger assessment with this report);
  3. That the child has attained competency
  4. That the child will not attain competency within 6 months for a misdemeanor or within 1 year for a felony.
- The court shall provide all reports to the DA, child's attorney, child's intake worker, GAL, and child's parents/guardian.

10A O.S. § 2-2-401.7(E)

# COMPETENCY HEARING

Within 15 judicial days of receiving a provider's report, a hearing shall be held to determine:

1. If the child is making progress or is so uncooperative that competency attainment is not effective, the court may change or modify the setting or services;
2. If the child has not or will not attain competency within 6 months for a misdemeanor or within 1 year for a felony, the court shall dismiss the petition or information without prejudice;
  - a. A dismissal shall not preclude filing a delinquent or youthful offender case in the future
  - b. A dismissal does not bar a civil action that formed the basis for the petition or information.

10A O.S. § 2-2-401.7

# CONFIDENTIAL JUVENILE RECORDS

The following **records are confidential**:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

**10A O.S. § 2-6-102**

**Unless:**

1. Charged or Certified as adult or YO;
2. Traffic or motor vehicle regulation violation;
3. Age 14 and adjudicated previously;
4. Adjudicated with a felony against person or involving dangerous weapon;
5. Arrest records for felony;
6. Violation of tobacco law; or
7. Out-of-state crime that would be YO crime here.

# JUVENILE SEX OFFENDER REGISTRY

- **Not less than 14**
  - Adjudicated Delinquent or YO of registrable offense
- **Upon Application of DA**
  - Evaluated by 2 qualified professionals
- If granted, **Court** must give written notice.
- Juvenile **must** register on an **annual** basis.
- DA **may** petition to transfer to adult registry.

**10A O.S. §§ 2-8-101 through 2-8-112**



# INTERSTATE COMPACT ON JUVENILES

- [www.juvenilecompact.org](http://www.juvenilecompact.org)
- Forms, flowchart and bench book for judges
- How to handle runaways and juveniles from other states





**JJAC**

Juvenile Justice Oversight  
and Advisory Committee