

Tulsa Law Review

Volume 26 | Number 3

Spring 1991

Children in Need of Mental Health Treatment: A Judge's View of Revised Public Law and New Private Law Proceedings

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**CHILDREN IN NEED OF MENTAL HEALTH
TREATMENT: A JUDGE'S VIEW OF
REVISED PUBLIC LAW AND NEW
PRIVATE LAW PROCEEDINGS**

Edward L. Thompson*

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I. INTRODUCTION

Children are in our courts on matters related to mental illness with increasing frequency. Unfortunately, law schools offer few, if any, courses on juvenile law. Further, most court hearings involving children

are confidential, and most of the records are sealed. Therefore, lawyers and judges may find themselves in court with no relevant education, training or experience.

The purpose of this article is to guide Oklahoma lawyers and judges through the secret world of juvenile mental health law. The focus is on that maze of overlapping and sometimes conflicting legislation known as the Juvenile Code.¹ Particular focus is on House Bill 2354,² which became effective September 1, 1990.³ The bill revises the Juvenile Code's public law proceedings. It also creates new private law proceedings for children fourteen and older who are privately placed by their parents in mental hospitals.

The article begins with a brief legal history. The Juvenile Code's public law proceedings are then examined in detail. Private law proceedings are explored in a like manner. The article concludes with suggested changes in the law.⁴

II. HISTORY AND PHILOSOPHY

A. Legal History

To better understand Oklahoma's current law, it may be helpful to highlight a few key cases from the federal and Oklahoma courts concerning the rights of the mentally ill. In *O'Connor v. Donaldson*,⁵ the United States Supreme Court held that psychiatric confinement of a nondangerous mentally ill person who is capable of surviving outside an institution is unconstitutional.⁶ Such confinement violates the individual's constitutional right to liberty, guaranteed by the Fourteenth Amendment.⁷

1. OKLA. STAT. tit. 10, §§ 1101-1506 (1981 & Supp.1990). In 1990, Oklahoma's Legislature passed no less than eight separate bills making multiple amendments to various sections of the Juvenile Code, some of which are inconsistent. See 1990 Okla. Sess. Laws. 51, 84, 100, 211, 238, 272, 302, and 337.

2. 1990 Okla. Sess. Laws 302.

3. *Id.* at 1502.

4. For suggested changes in the law in the related areas of deprived children and Indian children, see Thompson, *Protecting Abused Children: A Judge's Perspective on Public Law Deprived Child Proceedings and the Impact of the Indian Child Welfare Acts*, 15 AM. INDIAN L. REV. 1, 111-12 (1990).

5. 422 U.S. 563 (1975).

6. *Id.* "[A] state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with help of willing and responsible family members or friends." *Id.* at 576.

7. U.S. CONST. amend. XIV, § 1: "[N]or shall any state deprive any person of life, liberty or property, without due process of law"

Children as well as adults have a substantial liberty interest in freedom from unnecessary mental health confinement.⁸ However, in *Parham v. J. R.*⁹ and *Secretary of Public Welfare of Pennsylvania v. Institutionalized Juveniles*¹⁰ the United States Supreme Court held that parents can "voluntarily" commit their children to state mental hospitals without violating the federal constitution if the commitment decision is confirmed by a "neutral factfinder":

We conclude that the risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied. (citations omitted). That inquiry must carefully probe the child's background using all available sources, including, but not limited to, parents, schools, and other social agencies. Of course, the review must also include an interview with the child. It is necessary that the decisionmaker have the authority to refuse to admit any child who does not satisfy the medical standards for admission. Finally, it is necessary that the child's continuing need for commitment be reviewed periodically by a similarly independent procedure.¹¹

The Court recognized that parents "retain plenary authority to seek such care for their children, subject to a physician's independent examination and medical judgment."¹² The Court concluded that the admitting staff of a state mental hospital can fulfill the role of the "neutral factfinder."

The Supreme Court of Oklahoma has held that patients in mental hospitals have the constitutional right to meaningful treatment.¹³ Except for emergencies, patients also have the corollary right to refuse treatment, based on the constitutional right to privacy.¹⁴ The Court directed its opinion to "competent adults involuntarily admitted to . . . state mental hospital[s]."

However, in 1978, Legal Aid of Western Oklahoma filed a class action lawsuit challenging the conditions and child care practices of children's institutions run by the State of Oklahoma.¹⁵ The lawsuit, known

8. *Parham v. J.R.*, 442 U.S. 584 (1979).

9. *Id.*

10. 442 U.S. 640 (1979).

11. *Parham*, 442 U.S. at 606-607.

12. *Id.* at 604.

13. *In re K.K.B.*, 609 P.2d 747, 749 (Okla. 1980) (adult treatment).

14. *Id.* at 751.

15. *Terry D. v. L. E. Rader*, CIV-78-0004-T (W.D. Okla. 1978). The Court certified the plaintiff class to include all children now or in the future confined to an Oklahoma institution. On November 3, 1982, the Court entered an order granting interim relief. On May 31, 1984, the Court entered a consent decree, which is still being monitored.

as the "Terry D." case, attracted national attention in a series of reports by the Gannett News Service entitled "Oklahoma's Shame."¹⁶ In 1982, the Oklahoma Legislature responded to *Terry D.* by passing House Bill 1468.¹⁷ The bill created a new adjudicatory category to distinguish children alleged to be mentally ill from those alleged to be delinquent,¹⁸ deprived,¹⁹ or in need of supervision.²⁰ The Legislature called this new category "child in need of treatment," or INT. The Legislature defined the term:

"Child in need of treatment" means any child who is afflicted with a substantial disorder of the emotional processes, thought, or cognition which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life appropriate to the

16. See Godfrey, *DHS Sees Controversy, Change, Record Needed*, The Sunday Oklahoman, December 31, 1989, at 20A, col. 3.

17. 1982 Okla. Sess. Laws 312, now codified in various sections of OKLA. STAT. tit. 10, §§ 1101-1506 (Supp. 1990).

18. OKLA. STAT. tit. 10, § 1101(2) (Supp. 1990) defines a "delinquent child" as one who: "(a) has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of Section 1101 through 1506 of this title, or (b) has habitually violated traffic laws or traffic ordinances."

19. *Id.* at § 1101(4) (Supp. 1990) defines a "deprived child" as one:

who is for any reason destitute, homeless, or abandoned, or who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be, or who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment, or who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child, or who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance, or whose parent or legal custodian for good cause desires to be relieved of his custody. No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of Sections 1101 through 1506 of this title. The phrase dependent and neglected shall be deemed to mean deprived.

20. *Id.* at § 1101(3) (Supp. 1990) defines a "child in need of supervision" as a child who:

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

age of the child. The term child in need of treatment shall not mean a child afflicted with epilepsy, mental retardation, organic brain syndrome, physical handicaps or brief periods of intoxication caused by such substances as alcohol or drugs unless the child also meets the criteria for a child in need of treatment.²¹

On May 31, 1984, Oklahoma entered into the *Terry D.* consent decree. Oklahoma consented that children in state custody would receive individualized care and treatment and that children would be placed in the least restrictive setting consistent with each child's treatment needs. Put simply, Oklahoma was trying to deinstitutionalize.

Criticism persisted. The state's largest newspaper claimed that while the state was reducing its beds for custody youth by closing institutions, the effect was offset by huge increases in private psychiatric beds for children.²² Children who were previously adjudicated delinquent or in need of supervision and lockup in children's institutions were now being adjudicated INT and locked up in mental hospitals. The paper also charged a sinister motive: greed. The INT law "allowed hospitals to convert empty, unprofitable beds into beds for psychiatric care without regulation."²³

After Oklahoma's juvenile institutions closed, the state passed a law by which courts could declare children "in need of treatment." The law's purpose was to obtain mental health services for emotionally disturbed children who might otherwise be found as delinquents and not receive appropriate treatment.

But the INT law became an avenue by which mental health professionals could get paid. Hospitals found that treatment could be continued for a disturbed child, even after insurance money had run out, through the INT statute. Hospitals could petition the courts to have a child declared INT and Medicaid would pick up the tab.

"A lot of times, kids entered into state custody only because they didn't have any insurance," said Herman Jones, assistant professor at the OU Health Sciences Center and consultant for the Oklahoma County Juvenile Bureau.

Medicaid expenditures for adolescents in psychiatric care in Oklahoma zoomed from almost \$12 million in 1984 to nearly \$54 million in 1989. "What we've created is a hospital industry centered around the INT statute," said Becky McNeese, an Oklahoma City Attorney.²⁴

21. *Id.* at § 1101(5) (Supp. 1990).

22. Godfrey, *Institutional Care Becomes Only Choice*, *The Sunday Oklahoman*, Jan. 28, 1990, at 1A, col. 1 and 17A, col. 1.

23. *Id.* at 1A, col. 1.

24. *Id.* at 1A, col. 1 and 17A, col. 1.

The popular press has spotted the same problem across the nation.²⁵ Some private psychiatric hospitals run aggressive media campaigns through television, radio, newspapers and magazines. These for-profit mental hospitals urge parents with rebellious, suicidal, chemically dependent or otherwise troubled children to commit them. Consider this hypothetical: The for-profit hospital assures parents that medical insurance will cover the costs. But once the hospital exhausts the insurance money, it attacks the family's assets. Once the hospital drains the family's assets, it pressures the parents and the district attorney to begin public law INT proceedings so that the hospital can force taxpayers to pay the bills. The child is not treated as a patient, but milked as a profit center. If the money ever stops flowing, the for-profit hospital discharges the child as suddenly "cured."

More importantly than its staggering cost, inpatient treatment can be devastating because it restricts or denies the child's right to liberty. Children may also be forced to take mind-altering drugs, which can cause severe primary and side effects.²⁶ Worst of all, mental illness can be induced by putting children in a psychiatric hospital when they do not need to be there. These concerns, as well as the cost of inpatient treatment to the taxpayers, prompted the 1990 Oklahoma Legislature to pass House Bill 2354.²⁷ To better understand the Bill, one should understand the secrecy and philosophy of the juvenile court.

B. *The Secret World of the Juvenile Court*

The juvenile court is shrouded in secrecy; proceedings are confidential and closed to all but interested persons.²⁸ Even the published opinions of Oklahoma appellate courts are limited to disclosing only the

25. See, e.g., Darnton, *Committed Youth*, NEWSWEEK, Jul. 31, 1989, 66, 72; Barrett and Green, *Mom, Please Get Me Out!*, LADIES' HOME JOURNAL, May, 1990, 98, 106.

26. See, e.g., *In re K.K.B.*, 609 P.2d 747, 748, n. 3 (Okla. 1980):

Testimony at trial, judicial decisions and commentators point to many rather toxic and severe primary and side effects accompanying the use of psychotropic drugs such as: dysfunction of the central nervous system called extra pyramidal symptoms; blurred vision, dry mouth and throat, constipation or diarrhea, palpitation, skin rashes, low blood pressure, faintness, fatigue; also sometimes permanent states such as akinesia, akathisia and tardive dyskinesia characterized by rhythmical, repetitive involuntary movements of the tongue, face, mouth or jaw sometimes accompanied by other bizarre muscular activity. Also they may be responsible for a condition wherein white blood cells disappear called agranulocytosis which is fatal in 30% of the cases.

27. 1990 Okla. Sess. Laws 302, codified in various sections of OKLA. STAT. tit. 10 and 43A.

28. The hearings are private, unless the court specifically orders them conducted in public. Children's cases are heard separately from the trial of adults. Only persons having a direct interest in the case are admitted. The transcript of the hearing is not open to inspection except by court order. OKLA. STAT. tit. 10, § 1111 (1981). Compare *Oklahoma Publishing Co. v. District Court*,

initial of the child's surname rather than the child's name.²⁹ The public policy behind this secrecy is to protect the child's right to privacy, clearly an important interest. Yet, the public and the child pay a high price for this secrecy. The public sacrifices its right to know. Efforts to improve juvenile justice are hampered because the system is hidden from public view. The child may suffer as well, because unacceptable events or decisions are shielded by closed doors. A better approach is to open all juvenile proceedings and records to public inspection except when closed by court order following a showing of good cause.

Oklahoma's stated policy is to assure adequate and appropriate treatment, to use the least restrictive treatment consistent with the child's needs, to provide orderly and reliable procedures for the placement of a child alleged to be in need of treatment, and to protect the rights of any child placed outside the home.³⁰ The idea behind this policy is to keep the family together.³¹ The child receives needed mental health treatment on an outpatient basis, which costs less than inpatient treatment.

If the child is placed outside the home, Oklahoma's policy is that the child's care, custody and discipline should approximate, as near as possible, that which should be given by the child's parents.³²

430 U.S. 308, 311 (1977) (A juvenile hearing conducted in public cannot be subject to prior restraint). The court's records are not open to inspection except by court order, and then only to persons who can demonstrate a legitimate interest. OKLA. STAT. tit. 10, § 1125 (Supp. 1989). Juvenile records maintained by law enforcement officers are maintained separate from arrest records. OKLA. STAT. tit. 10, § 1127(a) (Supp. 1990). The records are not open to public inspection, nor may their contents be disclosed except by court order. However, the United States Supreme Court held in *Davis v. Alaska*, 415 U.S. 308, 320 (1974), that a child's adjudication in juvenile court may be used to show the child's bias, if any, should the child be a witness in a civil or criminal action before or after the child reaches majority. See also OKLA. STAT. tit. 10, § 1127(C)(2) (Supp. 1990). In counties with juvenile bureaus, all information obtained by any officer or court employee is privileged. OKLA. STAT. tit. 10, § 1203(b) (1981). The information can only be disclosed to the judge and others authorized by the juvenile code, except by court order. Records kept by other agencies and institutions are also confidential. OKLA. STAT. tit. 10, § 1506 (Supp. 1989). Child abuse reports are also confidential. OKLA. STAT. tit. 21, § 846(A) (Supp. 1987); OKLA. STAT. tit. 10, § 1109 (Supp. 1989).

29. OKLA. STAT. tit. 10, § 1123.1 (1981).

30. OKLA. STAT. tit. 10, § 1129(2) (Supp. 1982).

31. Oklahoma's policy is to support and strengthen the family:

The Oklahoma Legislature hereby declares that the public policy of this state is to assure adequate treatment of persons alleged to be in need of mental health treatment or treatment for drug or alcohol abuse, to establish behavioral standards for determination of dangerousness of persons in need of such treatment, to allow for the use of the least restrictive alternative in the determination of the method of treatment, to provide orderly and reliable procedures for commitment of persons alleged to be in need of treatment consistent with due process of law, and to protect the rights of patients hospitalized pursuant to law.

OKLA. STAT. tit. 43A, § 1-104(A) and (B)(1) (Supp. 1987).

32. OKLA. STAT. tit. 10, § 1129 (1981).

In 1990, the Oklahoma Legislature changed the definition of a "child in need of treatment":

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

- a. can be expected within the near future to intentionally or unintentionally seriously physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, or
- b. is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

The term "child in need of treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria for a child in need of treatment pursuant to subparagraphs a or b of this paragraph.³³

According to the Honorable Linda Larason, author of H.B. 2354,³⁴ the Legislature changed the definition of INT because the existing definition³⁵ was too broad. The Legislature narrowed the INT category, brought it more in line with the test for a "person requiring treatment" under the Mental Health Code,³⁶ and focused on the issue of inpatient mental health treatment. Indeed, the new definition for INT is drawn almost verbatim from the old dispositional order for inpatient treatment.³⁷

Instead of merely modifying the INT definition, the Legislature should have eliminated the INT category altogether. An analogy may prove helpful. A child with a broken arm does not have to be labeled "in need of medical treatment" to get medical attention. Similarly, a child

33. OKLA. STAT. tit. 10, § 1101(5) (Supp. 1990).

34. Interview with the Honorable Linda Larason, Okla. House of Representatives, at Fountainhead Lodge, Eufaula, Okla. (July 23, 1990).

35. See OKLA. STAT. tit. 10, § 1101(5) (Supp. 1988).

36. See OKLA. STAT. tit. 43A, § 1-103(n) (Supp. 1987).

37. See OKLA. STAT. tit. 10, § 1116(A)(5)(b)(1) and (2) (Supp. 1989) (dispositional order committing a child to inpatient mental health treatment).

with mental health problems should not have to be labeled INT to receive treatment. The Legislature should consider eliminating the INT category, or at least moving it to the Mental Health Code, thereby treating children's mental health matters similarly to those of adults. There is reason to believe the Legislature is moving in that direction. House Bill 2354 amends Oklahoma's mental health statutes to specify Oklahoma's public policy for children needing mental health services. Children are to receive services on an outpatient basis to the maximum extent possible.³⁸ Outpatient services are less expensive than inpatient services, impinge less seriously on the child's liberty, and cause fewer family disruptions. Inpatient mental health evaluation and treatment is utilized only when necessary: (1) to preserve the child's health or safety,³⁹ or (2) to protect others if the child is expected, due to a demonstrable mental illness, "to imminently intentionally or unintentionally seriously and physically injure another person."⁴⁰ The language for INT adjudication and inpatient treatment is almost identical.

III. PRETRIAL MATTERS

A. *Jurisdiction*

The district court has jurisdiction over any child found within the county who is, or is alleged to be, deprived, delinquent, or in need of treatment or supervision.⁴¹ The court's jurisdiction is invoked by the filing of a petition or by assumption of custody under section 1107.⁴² The court also has jurisdiction over the child's parent, guardian, or legal custodian regardless of where that person is found.⁴³ Once the court obtains jurisdiction over a child in need of treatment, it may retain jurisdiction until the child turns eighteen.⁴⁴ However, intrastate transfer of proceedings is permitted for the convenience of parties and in the interest of justice.⁴⁵

The court can also issue any temporary order or grant any interlocutory relief authorized by the Juvenile Code regardless of whether another Oklahoma district court has jurisdiction over the child or has jurisdiction

38. OKLA. STAT. tit. 43A, § 1-104(B)(2) (Supp. 1990).

39. *Id.*

40. *Id.*

41. OKLA. STAT. tit. 10, § 1102(A) (Supp. 1990).

42. *Id.* §§ 1102(A) and 1107 (Supp. 1990).

43. *Id.* § 1102(A) (Supp. 1990).

44. *Id.* This is referred to as the "maximum age" jurisdiction. Compare with delinquent children, over whom the court may retain jurisdiction until the child reaches nineteen years of age. *Id.*

45. *Id.*

to determine the child's custody or support.⁴⁶ If the court sustains the petition, it has jurisdiction: (1) to make a final determination on the juvenile petition, or (2) to transfer the proceedings to the district court having prior jurisdiction over the child.⁴⁷ If both proceedings are pending in the same judicial district, and if the judges to whom the cases have been assigned cannot agree on the procedure to be followed, then the chief judge of the judicial district determines whether the proceedings should be consolidated and, if consolidated, which judge will try the issues.⁴⁸

B. Preliminary Inquiry—Screening the Case to Determine Whether Formal Court Action is Necessary

Preliminary inquiry, also known as "intake," is a mandatory preadjudicative interview of the child and, if possible, of the child's parents, legal guardian or custodian.⁴⁹ The preliminary inquiry is performed by an individual duly authorized to determine: whether the child's adjudicative category is in need of treatment or supervision, deprived or delinquent; whether nonadjudicative alternatives are available and appropriate; and whether a petition should be filed.⁵⁰ The purpose of this preliminary inquiry is to screen cases and divert as many as possible away from court.

The court designates who conducts the preliminary inquiry.⁵¹ In major metropolitan counties, juvenile bureaus usually conduct the preliminary inquiry.⁵² In other counties, the Oklahoma Department of Human Services ("DHS") usually conducts the preliminary inquiry.⁵³ If DHS conducts the inquiry, it must follow those guidelines established by the Oklahoma Supreme Court and by DHS.⁵⁴ If it is determined no further action need be taken, the maker of the preliminary inquiry or the court may make such informal adjustment as is practicable without a petition.⁵⁵ If an informal adjustment is not practicable, a petition is filed.

46. *Id.* § 1102(C) (Supp. 1990).

47. *Id.* § 1102(D) (Supp. 1990).

48. *Id.*

49. *Id.* § 1101(10) (Supp. 1990).

50. *Id.*

51. *Id.* § 1103(A) (Supp. 1990).

52. *See id.* § 1201 (1981).

53. *See id.* § 1141 (Supp. 1982).

54. *Id.* § 1103(A) (Supp. 1990). *See also* Okla. Sup. Ct. & Dept. of Human Servs. Intake, Probation and Parole Guidelines, Jan. 1983 (published in accordance with OKLA. STAT. tit. 10, § 602(1) and (3) (1981)).

55. OKLA. STAT. tit. 10 § 1103(A) (Supp. 1990). Compare *Davis v. Davis*, 708 P.2d 1102,

C. *The Petition*

The district attorney is the only person authorized to file a petition alleging a child is in need of treatment.⁵⁶ Two prerequisites to the filing of such a petition must be met.⁵⁷ First, the child must undergo a "mental health examination"⁵⁸ by an "independent"⁵⁹ "qualified mental health professional."⁶⁰ The Legislature should be applauded for this very practical addition to Oklahoma law. The old law was problematic in that the mental health professional who recommended the child receive inpatient

1108-09 (Okla. 1985), where the Oklahoma Supreme Court states, in dicta, that *judges* must determine whether an informal adjustment or diversion is preferable to instituting formal juvenile proceedings:

All contests instituted under the [Juvenile] Code must first be judicially examined or "screened" for "intake" before they are allowed to proceed. The court, sitting in the administration of the so-called juvenile process, functions as the legally trained discretionary authority charged with the duty of balancing societal interests with those of the child.

Id. In making that statement, the Oklahoma Supreme Court relied on a 1977 decision of the Oklahoma Court of Criminal Appeals, *State v. Juvenile Div.*, Tulsa County Dist. Ct., 560 P.2d 974, 975-76 (Okla. Crim. App. 1977). At that time, section 1103(A) required the court itself to make the preliminary inquiry and court authorization to file a juvenile petition. *See* OKLA. STAT. tit. 10, § 1103(A) (Supp. 1976). Section 1103 was amended after the decision by the Court of Criminal Appeals. *See* 1977 Okla. Sess. Laws Ch. 259, § 3. It appears that this statutory amendment was not brought to the attention of the Oklahoma Supreme Court.

56. *Id.* § 1103(C) (Supp. 1990). *Compare* OKLA. STAT. tit. 10, § 1103(B) (Supp. 1990) (provides that "a petition in a juvenile proceeding may be filed by the district attorney or the person authorized to make the preliminary inquiry. . ."). Clearly, the Legislature intends that only district attorneys file INT petitions.

57. *See id.* § 1103(C) (Supp. 1990).

58. *Id.* § 1101(21) (Supp. 1990) defines "mental health examination" and "mental health evaluation" as:

an examination or evaluation of a child by a qualified mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the qualified mental health professional: (a) the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or (b) the child is not a child in need of treatment, and the mental health services, if any, necessary and appropriate for the child.

59. *Id.* § 1101(20) defines "independent" to mean:

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

60. *Id.* § 1101(19) defines "qualified mental health professional" as:

an individual having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who: (a) holds at least a master's degree in a mental health field and is employed by the Department of Mental Health and Substance Abuse Services, the State Department of Health, or the Department of Human Services as a provider of mental health services in an Office of Personnel Management employment classification of Psychological Assistant or above or Social Worker II or above, or (b) has been awarded a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field. For the purpose of this paragraph, "mental health field" means medicine, psychology, counseling and guidance, applied behavioral studies, human relations or social work.

treatment may have had a financial tie with the mental hospital. There existed a serious question whether the mental health professional's recommendation was based on the child's needs or, instead, on the doctor's personal interest in making a profit. The new law eliminates that conflict of interest by requiring that the mental health examination be performed by an *independent* mental health professional who has no financial interest in the mental hospital and so swears in an affidavit.

The law could be improved further by requiring that the affidavit be attached to the report of the mental health examination which is submitted to the district attorney. Very few mental health professionals will perjure themselves if they know the document they are swearing to is going directly to the district attorney. More importantly, the district attorney would receive a report which is free from conflict of interest.

It is also important that the Legislature defined what it meant by a "qualified mental health professional." Under prior law, valuable court time was wasted in endless debates over whether anyone other than a doctor of medicine or Ph.D. could be "qualified." The new definition is the result of a brainstorming session over whose word the court should accept.⁶¹ The intent is to maintain professional standards, yet be flexible enough to meet the pragmatic problems of rural Oklahoma where there may be few, if any, psychiatrists or psychologists.

The second prerequisite which must be met requires the district attorney to receive and review the report of the child's mental health examination by the independent qualified mental health professional.⁶² Only after this review may the district attorney file the petition.⁶³ This requirement was added at the request of an Oklahoma County assistant district attorney, who knew the importance of having an independent report in deciding whether to file an INT petition.

The INT petition is entitled, "In the matter of (name of child), a child alleged to be in need of treatment."⁶⁴ The petition sets forth: (1) the specific facts demonstrating the child is in need of treatment;⁶⁵ (2) the name, age, and residence of the child; (3) the names and residences of the child's parents; (4) the name and residence of the child's legal guardian,

61. Interview with the Honorable Linda Larason, Oklahoma House of Representatives, at Fountainhead Lodge, Eufaula, Oklahoma (July 23, 1990).

62. OKLA. STAT. tit. 10, § 1103(C) (Supp. 1990).

63. *See id.* Nothing in § 1103 prevents the filing of a petition alleging a child is in need of treatment and delinquent, or in need of supervision, or deprived. OKLA. STAT. tit. 10, § 1103(D) (Supp. 1990). The law permits multiple adjudications.

64. *Id.* § 1103(B).

65. *Id.*; *see also id.* § 1101(5) (defining the term "child in need of treatment").

if any; (5) the name and residence of the person or persons who have custody or control of the child; (6) if no parent or guardian can be found, then the name and residence of the nearest known relative; (7) the relief requested; and (8) the specific federal law, state law, or municipal ordinance under which the child is charged. If the district attorney seeks to have the child adjudged delinquent, the petition must also contain an endorsement of witnesses the district attorney intends to call.⁶⁶ If the district attorney seeks termination of parental rights, it must be stated in the petition and summons.⁶⁷ Any facts unknown to the district attorney must be identified in the petition as well as reasons why the facts are not known.⁶⁸ Although the petition may be made upon information and belief, such information and belief must be verified.⁶⁹

The district attorney attaches the report of the independent qualified mental health examination to the INT petition.⁷⁰ If the report is not attached or is inadequate to aid the court in the adjudication or disposition of the case, the court orders another independent mental health examination of the child.⁷¹ A report of the examination must be submitted to the court before the hearing on the petition.⁷² The court may order any other reports it deems necessary to aid in the adjudication or disposition of the case.⁷³ Although the Legislature recognizes the importance of these reports in helping courts decide cases, it nevertheless neglected to provide funding to pay for the reports. The Legislature should authorize funding so that the court can obtain the reports it needs. The Legislature should also amend the statute to make it clear that the report should be made by sworn affidavit.

Any mental health examination report that recommends inpatient mental health treatment must meet two requirements. The report must be "certified" and signed by two qualified mental health professionals, at least one of whom must be independent. It is not clear what the Legislature meant by requiring the report to be "certified." There should be a

66. *Id.* § 1103(B).

67. *Id.*

68. *Id.*

69. *Id.* See also *Intake, Probation and Parole Guidelines*, *supra* note 54 (DHS employees are authorized to verify petitions).

70. OKLA. STAT. tit. 10, § 1105(B)(1) (Supp. 1990).

71. *Id.*

72. *Id.*

73. *Id.*

sworn affidavit. The Legislature, recognizing the seriousness of recommending inpatient treatment, structured the new law to require two professionals, at least one of whom is independent, to agree that the child needs inpatient treatment.⁷⁴ A copy of the petition must be attached to and delivered with the summons.⁷⁵

When the district attorney files the petition, the court will appoint a separate attorney to represent the child, unless the child is otherwise represented by counsel.⁷⁶ The child's attorney cannot be a district attorney⁷⁷ because a district attorney represents the state, and the interest of the state and that of the child may conflict. The child must have a lawyer regardless of any attempted "waiver" of the child's right to a lawyer by parent or legal guardian.⁷⁸

If the child is taken into custody before the petition is filed, the district attorney has only five judicial days from the date of assumption of custody to file the petition and issue summons.⁷⁹ If this is not accomplished, the child's custody must be relinquished to the child's parent, guardian, or other legal custodian.⁸⁰ However, if the child has been taken into custody and the court orders the child to undergo an inpatient mental health examination⁸¹ pursuant to the statute,⁸² the court determines whether the petition was filed within a reasonable time.⁸³

D. *Amendments To The Petition and Subsequent Pleadings*

"[The] petition may be amended by order of the court at any time before an order of adjudication [is entered]."⁸⁴ If the court permits an amendment, the parties will be granted additional time to prepare, which assures a full and fair adjudicatory hearing.⁸⁵ Because juvenile actions

74. *Id.* § 1105(B)(2). The terms "mental health examination," "child in need of treatment," "qualified mental health professional," and "independent" are all defined at *Id.* § 1101 (Supp. 1990).

75. *Id.* § 1103(E).

76. *Id.* § 1109(B).

77. *Id.*

78. *Id.*

79. *Id.* § 1104.1(A).

80. *Id.*

81. *See id.* § 1101(21) (mental health examination defined).

82. *Id.* § 1120.

83. *Id.* § 1104.1(D).

84. *Id.* § 1103.1(B) (1981).

85. *Id.*

are special statutory proceedings.⁸⁶ No pleading is required after the petition.⁸⁷ No answer to the petition is required,⁸⁸ and no defensive pleadings are necessary. "The petition is deemed controverted in all respects upon its filing because the legal presumption is that the best interests of children are served by their parents. The burden of proving otherwise is on the petitioner seeking to interrupt and restrict that relationship."⁸⁹

"Juvenile actions are not . . . the sort of proceeding capable of resolution upon a flurry of pleadings."⁹⁰ The Court's focus is on the best interest of the child, and that cannot be determined by a pleading battle between counsel. Therefore, a hearing on the petition is mandatory.⁹¹ Summary judgment does not apply to juvenile proceedings.⁹² The "filing of any motion or pleading shall not delay the holding of the adjudicatory hearing."⁹³

A petition is "deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the court [cannot] amend the adjudicatory category prayed for in the petition."⁹⁴ For example, the court cannot change the nature of the proceeding from one which determines whether the child is "in need of treatment" into one to determine whether the child is "delinquent,"⁹⁵ "deprived,"⁹⁶ or "in need of supervision."⁹⁷

E. *Summons*

Once the petition is filed, summons is issued unless the parties voluntarily appear.⁹⁸ The summons "recite[s] briefly the nature of the proceeding with the phrase 'as described more fully in the attached

86. *In re Christina T.*, 590 P.2d 189, 193, (Okla. 1979); OKLA. STAT. tit. 12, § 2001(Supp. 1985) and committee comment to § 2001.

87. OKLA. STAT. tit. 10, § 1103.1(A) (1981).

88. *Christina T.*, 590 P.2d at 192.

89. *Christina T.*, 590 P.2d at 192 (discussing deprived children).

90. *Id.*

91. *Id.* at 191.

92. *Id.* at 192.

93. OKLA. STAT. tit. 10, § 1103.1(A) (1981).

94. *Id.* § 1103.1(B).

95. *Id.* § 1101(2) (Supp. 1990) (defines "delinquent child").

96. *Id.* § 1101(4) (Supp. 1990) (defines "deprived child").

97. *Id.* § 1101(3) (Supp. 1990) (defines "child in need of supervision").

98. *Id.* § 1104(a).

petition.’”⁹⁹ Further, the summons requires the custodial party to appear personally and bring the child before the court at a stated time and place.¹⁰⁰ “The summons shall state the relief requested, and . . . the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.”¹⁰¹ However, if the district attorney seeks termination of parental rights¹⁰² or an order for the payment of funds for the child’s care and maintenance, the request must be stated in the summons.¹⁰³

A summons is served on the person having “actual custody” of the child.¹⁰⁴ A summons is also served on any child twelve or older.¹⁰⁵ However, if the person having actual custody of the child is not the guardian or parent, then the guardian, parent, or both are served with summons.¹⁰⁶ “If no parent or guardian can be found,” a summons is served on any other person the court designates.¹⁰⁷ “Summons may be issued requiring the appearance of any other person whose presence is necessary.”¹⁰⁸

However, no notice is required to a parent where, after a hearing, the court finds:

1. [t]he parent does not have custody of the child and has never established or has not maintained a substantial relationship with the child nor manifested a significant interest in the child for a period of not less than one (1) year preceding the filing of the petition; or
2. [t]he parent does not have custody of the child and 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 year preceding the filing of the petition, or in the absence of such Order, consistent with the parent’s means and earning capacity.¹⁰⁹

The Oklahoma Legislature added these exceptions to the notice provisions of the Juvenile Code in 1988.¹¹⁰

99. *Id.* See also *id.* § 1103(E) (Supp. 1990) (requiring that “a copy of the petition be attached to and delivered with the summons”).

100. *Id.* § 1104(a).

101. *Id.*

102. *Id.* § 1103(B).

103. *Id.*

104. *Id.* § 1104(b).

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* § 1104(b) (Supp. 1990).

110. Act approved July 6, 1988, ch. 318, § 2, 1988 Okla. Sess. Laws 1593, 1594 (codified at OKLA. STAT. tit. 10, § 1104(b)). For a discussion of why the Legislature added these exceptions, see Thompson, *supra* note 4, at 38-45.

F. *Service of Process*

The Juvenile Code authorizes service of process "by certified mail to [the] person's last-known address, requesting a return receipt from the addressee only."¹¹¹ In the alternative, the Juvenile Code authorizes service by the same methods used in civil actions.¹¹² The methods of service of process in civil actions are found in the Oklahoma Pleading Code,¹¹³ which authorizes service of process by a sheriff, deputy sheriff, a licensed process server, or a person specially appointed to serve process.¹¹⁴ The Oklahoma Pleading Code also authorizes service by certified mail, return receipt requested and delivery restricted to the addressee.¹¹⁵ "If service cannot be made by personal delivery or by mail," the Oklahoma Pleading Code authorizes service by court order upon an individual fifteen years of age or older "in any manner which is reasonably calculated to give [the individual] actual notice of the proceedings and an opportunity to be heard."¹¹⁶ This gives the court discretion to fashion a method of service appropriate to particular circumstances and consistent with due process.¹¹⁷

If the address of the person to be summoned is not known, or the mailed summons is returned, both the Juvenile Code¹¹⁸ and the Oklahoma Pleading Code¹¹⁹ authorize service by publication. The Juvenile Code requires notice of the hearing to be published once in a newspaper of general circulation in the county.¹²⁰

"Actual notice is the preferred method of satisfying due process requirements, but it has long been recognized that actual notice is not always feasible."¹²¹ As the United States Supreme Court said in *Mullane v. Central Hanover Bank & Trust Co.*¹²²:

111. OKLA. STAT. tit. 10, § 1105(A) (Supp. 1990).

112. *Id.*

113. OKLA. STAT. tit. 12, §§ 2001-2027 (Supp. 1990).

114. *Id.* § 2004(C)(1)(a).

115. *Id.* § 2004(C)(2)(b).

116. *Id.* § 2004(C)(6).

117. See *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

118. OKLA. STAT. tit. 10, § 1105 (Supp. 1990).

119. OKLA. STAT. tit. 12, § 2004(C)(3)(a) (Supp. 1990) provides:

Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

120. OKLA. STAT. tit. 10, § 1105 (Supp. 1990). For the method of publication service authorized by the Oklahoma Pleading Code, see OKLA. STAT. tit. 12, § 2004(C)(3)(c) (Supp. 1990).

121. *Dana P. v. State*, 656 P.2d 253, 255 (Okla. 1982).

122. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

This Court has not hesitated to approve of resort to publication as a customary substitute. . . where it is not reasonably possible or practicable to give more adequate warning. Thus it has been recognized that, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to the final decree foreclosing their rights.¹²³

Oklahoma District Court Rule 16¹²⁴ requires an inquiry, either in open court or in chambers, to determine judicially whether the petitioner made a diligent and meaningful search of all reasonably available sources at hand to locate the whereabouts or mailing address of the person to be served.¹²⁵ This information is often presented to the judge in the form of an affidavit for service by publication. The court may also entertain sworn testimony at the hearing.¹²⁶ The court should include a recital of its findings in the journal entry of judgment.¹²⁷

As a practical matter, service by publication is the method of notice least calculated to bring a party's attention to the pendency of judicial

123. *Id.* at 317.

124. OKLA. STAT. tit. 12, ch. 2 app. at 992 (1981).

125. *Id.*

126. See OKLA. STAT. tit. 12, § 2004(C)(3)(e) (Supp. 1990):

Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph.

The committee comment to § 2004(C)(3)(e) states:

Subparagraph e of paragraph 3 of subsection C of Section 2004 requires a judicial investigation of the sufficiency of the search to ascertain the whereabouts of parties served solely by publication. This incorporates provisions of Oklahoma District Court Rule 16. The Oklahoma Supreme Court held in *Bomford v. Socony Mobile Oil Co.*, 440 P.2d 713 (Okla. 1968), that the due process provision of the United States Constitution requires a hearing on a default judgment after service by publication to include an evidentiary showing of due diligence in attempting to accomplish actual notice to the defendant. Stating that before a plaintiff may resort to publication process he must make a diligent search of all available sources, the court indicated that due diligence requires at least a search of local tax rolls, deed records, judicial and other official records, telephone directories, city directories, and the like. The facts of such hearing need not be set out in the affidavit but must be proved at the hearing on a default judgment. Implicit in the hearing requirement is the provision that where a search reveals the identity and location of a defendant, publication will no longer be an acceptable form of service. The Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950), stated that in order to meet the due process requirement of "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action . . . the means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." The Court held that publication service did not meet that standard with respect to known parties with known residences. *Id.* at 318.

OKLA. STAT. ANN. tit. 12, § 2004 (West Supp. 1991).

127. *Dana P. v. State*, 656 P.2d 253, 257 n.4 (Okla. 1982); Okla. Dist. Ct. R. 16.

proceedings.¹²⁸ The United States Supreme Court, in *Mullane*, recognized that “[p]ublication may theoretically be available for all the world to see, but it is too much in our day to suppose that [everyone] does or could examine all that is published to see if something may be tucked away in it that affects [their] . . . interests.”¹²⁹ Further, the Court said in *McDonald*, “great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.”¹³⁰ What is required is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹³¹ A striking example of the abuse of the resort to publication by the Oklahoma Department of Human Services is found in *Kickapoo Tribe of Oklahoma v. Rader*.¹³² Clearly, publication must be used only as a last resort. Otherwise, the state court proceeding will be invalidated.

Anyone who has been properly summoned but fails to appear without good cause may be cited for contempt of court.¹³³ A warrant may be issued against a parent, custodian, or child where: (1) the party served fails to obey the summons, (2) the summons cannot be served, (3) it appears to the court that service will be ineffectual, or (4) it appears to the court that the child’s welfare requires that the child be brought immediately into the court’s custody.¹³⁴

G. *Taking the Child into Custody after the Petition is Filed*

After the petition is filed, it may appear the child is in such condition or surroundings that the child’s welfare requires the court immediately to assume custody of the child. In such a case, the court may immediately issue a detention order or warrant to authorize taking the child into custody.¹³⁵

H. *Emergency Proceedings*

In an emergency, immediate action may be necessary to protect the child or the public even before the petition is filed. Taking the child into

128. *Boddie v. Connecticut*, 401 U.S. 371, 382 (1971); *In re Del Moral Rodriguez*, 552 P.2d 397, 400 (Okla. 1976).

129. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 320 (1950).

130. *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

131. *Mullane*, 339 U.S. at 314.

132. 822 F.2d 1493 (10th Cir. 1987).

133. OKLA. STAT. tit. 10, § 1106 (1981).

134. *Id.*

135. *Id.* § 1104(d) (Supp. 1990).

custody may be necessary to afford this protection. There are two ways to take a child into custody before a petition is filed: (1) by court order, or (2) by a peace officer or employee of the court acting without a court order.¹³⁶

To obtain a court order for taking a child into custody prior to filing a petition, the district attorney files an application with the court¹³⁷ that may be supported by a sworn affidavit based on information and belief.¹³⁸ "The application must state facts sufficient to demonstrate reasonable suspicion that the child needs protection due to abandonment, abuse or neglect, or surroundings which endanger the child's welfare."¹³⁹ The Legislature should amend this section to *require* that the application be supported by sworn affidavit and to *require* that the affidavit articulate facts which demonstrate that the child or public needs emergency court action.

A peace officer or employee of the court may take a child into custody without a court order under three circumstances. First, a court order is not required if the child violates any law or ordinance.¹⁴⁰ Second, custody without a court order is allowed if the child willfully and voluntarily leaves home without consent from the parent, guardian, or legal custodian and is absent for a substantial length of time or does not intend to return.¹⁴¹ Finally, a court order is not required to take the child into custody if the child's surroundings endanger the child's welfare.¹⁴²

A child in need of treatment who is taken into custody must be taken to a shelter, hospital or foster home¹⁴³ or be taken immediately before a judge of the district court who may designate an appropriate place to detain the child or issue an order for protective custody.¹⁴⁴ If a child in need of treatment is taken into custody without a court order, the peace officer or court employee detaining the child must report the detention immediately to the district judge in the county where the child was taken into custody. Whenever possible, the child's parent or legal guardian must be given immediate notice that the child has been taken

136. *See id.* § 1107(A)(1)-(2).

137. *Id.* § 1107(A)(2).

138. *Id.*

139. *Id.*

140. *Id.* § 1107(A)(1) (Supp. 1990).

141. *Id.*

142. *Id.*

143. *Id.* § 1107(E)(2) (Supp. 1990).

144. *Id.* "If no judge is available locally, the child's detention must be reported immediately to the presiding judge of the judicial administrative district. If the presiding judge cannot be reached, then to any judge regularly serving within the judicial administrative district." *Id.*

into custody.¹⁴⁵ Unfortunately, the Legislature failed to specify who is responsible for giving the notice. The statute should be amended to require the person taking the child into custody to notify parents and to provide proof of notification to the court in the form of an affidavit of service.

The child's parent or legal guardian is also entitled to adequate notice of any "show cause" hearing under the statute.¹⁴⁶ Again, the Legislature failed to specify who is responsible for giving the notice. The statute should be amended to require the district attorney to notify parents of any "show cause" hearing, and the district attorney should be required to prove to the court that the notice was given.

Oklahoma law requires a "show cause" hearing to determine judicially the child's custody pending further court proceedings.¹⁴⁷ After the hearing, the judge may require that the child remain in protective custody, or the judge may release the child to a parent or guardian.¹⁴⁸ The court must conduct the initial "show cause" hearing within two judicial days of the child's being taken into custody.¹⁴⁹ This immediate post-deprivation hearing can correct an improvident assumption of protective custody. Thereafter, the court determines intervals at which additional "show cause" hearings will be conducted.¹⁵⁰ The court may release a child allegedly in need of treatment from protective custody upon conditions it finds reasonably necessary to protect either the child or the public.¹⁵¹ The court also determines whether allegations regarding the child warrant additional time for the district attorney to file a petition.¹⁵² "A child may be detained in custody only if it is necessary to protect the child or the public or to assure the child's appearance in court."¹⁵³

Oklahoma law restricts the lifespan of custody orders. Preadjudication and predisposition custody orders last no longer than thirty days. However, the court may extend a custody order, for good cause shown, for up to sixty days.¹⁵⁴

Children cannot be "transported or detained with criminal, vicious,

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* §§ 1104.1, 1107(E)(2).

152. *Id.*

153. *Id.* § 1107.1(A).

154. *Id.* § 1107.1(A)(1)

or dissolute persons.”¹⁵⁵ A child taken into custody as a child in need of treatment cannot be placed in any detention facility pending court proceedings except as provided in the statute.¹⁵⁶ If the child is not placed in shelter care or foster care, the child must be released to a parent or other responsible party¹⁵⁷ unless the child is a runaway and the court finds that continued detention is “essential for the safety of the child”.

The person holding the child in custody may provide the child medical care within certain guidelines. “[If a] child is taken into custody . . . and it reasonably appears to the peace officer, employee of the court, or other person acting pursuant to court order that the child [needs] medical treatment, [that person must exercise] due diligence to locate the [child’s] parent, guardian or other person legally competent to authorize . . . medical treatment.”¹⁵⁸ In the absence of a parent or guardian, the peace officer, employee, or person acting under court authority may authorize the child’s medical examination or treatment on their own cognizance.¹⁵⁹ Persons who, in good faith, authorize medical examination or treatment under these circumstances are immune from civil or criminal liability.¹⁶⁰ The child’s parent, guardian, or custodian is responsible for any medical expenses ordered by the court.¹⁶¹ Under Oklahoma law, psychiatric examination or treatment, either emergency or routine, may not be provided to a child who has been taken into custody. Neither may psychiatric examination or treatment be given a child who, by adjudication or allegation is, is in need of treatment or supervision, or who is deprived or delinquent.¹⁶² However, these statutes do not prohibit the rendering of services other than mental health examination or treatment if the child is admitted to a hospital for necessary medical care.¹⁶³

I. *Emergency Psychiatric Admission*

A child who has been taken into custody, or who is alleged or adjudicated in need of treatment or supervision, deprived, or delinquent, may not be admitted to a hospital or mental health facility on an emergency

155. *Id.* § 1107.1(A)(2).

156. *Id.* § 1107.1(A).

157. *Id.*

158. *Id.* § 1107(D).

159. *Id.*

160. *Id.*

161. *Id.*

162. *See id.* § 1107(E)(1).

163. *Id.* § 1107(E)(3). *See also id.* § 1105(A), which provides: “Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child’s health or welfare.”

psychiatric basis except as provided in section 1107(F).¹⁶⁴ The procedure for an emergency psychiatric admission is as follows. First, a "qualified mental health professional"¹⁶⁵ conducts a "prescreening mental health evaluation"¹⁶⁶ to determine whether the child should be admitted to a hospital or an inpatient mental health facility on an emergency psychiatric basis.¹⁶⁷ This evaluation must be face-to-face. This is a very practical reform in juvenile law. The Legislature expects the mental health professional to do more than quickly review the child's medical file or make a cursory telephone call. The requirement is a clear directive that the mental health professional must evaluate the child in person. It makes good sense to see a child before labelling one as self-destructive or a danger to others and confining the child involuntarily in a mental hospital.

If the qualified mental health professional determines there is reasonable cause to believe an imminent danger exists that the child will cause intentional or unintentional serious physical injury to himself, herself, or another person, the child may be admitted on an emergency psychiatric basis.¹⁶⁸ The emergency psychiatric admission cannot last for more than two judicial days, excluding weekends and legal holidays, except upon a court order for an inpatient mental health examination of the child as provided in section 1120.¹⁶⁹ Here again, the Legislature shows considerable insight in the problems of mental health treatment. The prior practice by some professionals was to label the admission an "emergency," then retain the child for thirty days or more. Of course, the harm to the child and the cost imposed on the taxpayers was enormous. The Legislature received testimony that revealed true emergencies can be resolved in two days because, within that time, either the crisis is over

164. *See id.* § 1107(E)(1)(a).

165. *Id.* § 1101(19) defines "qualified mental health professional" as:

an individual having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who:

a. holds at least a master's degree in a mental health field and is employed by the Department of Mental Health and Substance Abuse Services, the State Department of Health, or the Department of Human Services as a provider of mental health services in an Office of Personnel Management employment classification of Psychological Assistant or above or Social Worker II or above, or

b. has been awarded a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field.

For the purpose of this paragraph, "mental health field" means medicine, psychology, counseling and guidance, applied behavioral studies, human relations or social work.

166. *Id.* § 1101(23).

167. *Id.* § 1107(F).

168. *Id.*

169. *Id.* § 1107(E)(2),(F).

and the child can be discharged, or a serious problem is identified and documented that justifies continued inpatient treatment. Either way, the medical decision can and should be made in two days.¹⁷⁰ Of course, some uncertainty remains. For example, the Legislature did not define the term "imminent danger," nor what it means by a "serious" physical injury.

J. *Mental Health Examination*

A "mental health examination" is an evaluation of a child by a qualified mental health professional to determine whether:

- a. the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or
- b. the child is not a child in need of treatment, and the mental health services, if any, necessary and appropriate for the child.¹⁷¹

The court may issue an order for a mental health examination of a child who has been taken into custody, or alleged or adjudicated deprived, delinquent, or in need of treatment or supervision.¹⁷² This order follows a "prescreening mental health evaluation"¹⁷³ or an application by the district attorney for a court order for the child's mental health examination.¹⁷⁴ If the court grants the application, the court orders the mental health examination be conducted on an outpatient basis "in or near the community in which the child resides" at the time the order is issued.¹⁷⁵ The Legislature's preference for outpatient examination and a desire to keep the child in the home are evident in this procedure. The court's order must specify that the mental health examination be conducted by an "independent"¹⁷⁶ qualified mental health professional.

The court may order the mental health examination to be conducted on an inpatient basis only under the stringent conditions of the Oklahoma Statutes.¹⁷⁷ As with an outpatient examination, the process begins with a prescreening mental health evaluation of the child. The district attorney then files an application for a court order for the mental

170. Interview with the Honorable Linda Larason, Okla. House of Representatives, at Fountainhead Lodge, Eufaula, Okla. (July 23, 1990).

171. OKLA. STAT. tit. 10, § 1101(21) (Supp. 1990).

172. *Id.* § 1120(C).

173. The term "prescreening mental health evaluation" is defined at *id.* § 1101(23).

174. *Id.* § 1120(C).

175. *Id.* § 1120(C)(2).

176. *Id.* § 1101(20) defines the term "independent."

177. *Id.* § 1120(C)(1).

health examination. Only if the court finds by clear and convincing evidence that an "imminent danger that the child will seriously physically injure himself or another person" exists,¹⁷⁸ will the court will order an inpatient mental health examination by an independent qualified mental health professional. The Legislature expects the mental hospital to promptly complete the examination. Therefore, the Legislature has mandated that the court's order for an inpatient mental health examination last for no more than ten days.¹⁷⁹

K. *Medical Examination and Treatment*

After a petition is filed, the court may order examination of the child to aid the court in its decision concerning the child.¹⁸⁰ If the child "appears to be in need of nursing, medical or surgical care," the court may order the parent or guardian to provide such care in a medical facility.¹⁸¹ If such care is not provided, the court may enter an order for care after notifying the parties.¹⁸² Although court-approved expenses are charged to the county, the court can still hold the responsible party liable for all or part of the expenses incurred.¹⁸³

In an emergency, when the child's health or condition requires it, the court may order the child placed in a public or private hospital or institution which will receive the child and consent to provide the emergency treatment.¹⁸⁴

L. *Court Appointed Special Advocates*

A court-appointed special advocate, or CASA volunteer, is a responsible adult who has volunteered to be available for appointment by the court to serve as an officer of the court and represent the child when a juvenile petition is filed.¹⁸⁵ A CASA volunteer must not be an attorney for either party.¹⁸⁶ However, the CASA volunteer does advocate the best interests of the child and assists the child in obtaining a "permanent,

178. *Id.* § 1120(C)(1).

179. *Id.* § 1120(C)(1).

180. *Id.* § 1120(A).

181. *Id.* § 1120(B).

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.* § 1109(D).

186. *Id.*

safe, homelike placement.”¹⁸⁷ The CASA volunteer has the right to examine the court file and all records and reports regarding the child or the child’s parents or custodian, under section 1109 or under title 21, section 846 of the Oklahoma Statutes.¹⁸⁸ However, the CASA volunteer must keep this information confidential.¹⁸⁹ As the name implies, the CASA volunteer serves without compensation.¹⁹⁰ The Oklahoma Supreme Court may prescribe by rule additional qualifications, duties, and responsibilities for CASA volunteers.¹⁹¹ CASA volunteers are presumed to act in good faith and therefore enjoy immunity from civil liability.¹⁹² They serve until discharged by the court.¹⁹³

IV. ADJUDICATION

A. *The Adjudicatory Hearing*

The adjudicatory hearing is held to determine whether the allegations of the petition are supported by the evidence and whether the child should be adjudged a ward of the court.¹⁹⁴ State law guarantees parents sufficient time to prepare for the hearing. The court cannot hold the adjudicatory hearing until at least forty-eight hours after service of summons unless the child’s parent or guardian consents to an earlier time; longer time limits apply if service is by out-of-state mail (minimum five days) or by publication (minimum ten days).¹⁹⁵ If the petition alleges the child is in need of treatment and the court has ordered the child to undergo an inpatient mental health examination, the adjudicatory hearing must be held within twenty days of the child’s inpatient admission to a hospital or mental health facility.¹⁹⁶ This change in Oklahoma law may lead to confusion. The prior law required the hearing to be held within ten judicial days after the court received the report of the inpatient mental health examination.¹⁹⁷ What the Legislature intended to do was simply increase the time for holding the adjudicatory hearing from ten

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* § 1101(8).

195. *Id.* § 1105(A).

196. *Id.* § 1105(B).

197. *See id.* § 1120(B) (3) (Supp. 1986), repealed by Act effective Sept. 1, 1990, 1990 Okla. Sess. Laws 302 § 9. The new twenty day time limit appears in *id.* § 1105(B) (Supp. 1990), as amended by 1990 Okla. Sess. Laws 302 § 4.

days to twenty. Unfortunately, it created a ten day gap between the inpatient mental health examination, which lasts for no more than ten days, and the adjudicatory hearing, which might not be held until twenty days after the child's inpatient admission. This raises some interesting questions. Must the child be discharged from inpatient treatment pending the adjudicatory hearing? What happens if the adjudicatory hearing is not held within the twenty day time frame? Does the court dismiss the case and discharge the child? One solution is for the Legislature to revise the statute and grant the court clear authority to continue inpatient treatment for good cause shown pending the adjudicatory hearing. The Legislature should also amend the statute to make it clear that the court can continue an adjudicatory hearing for good cause shown and enter temporary orders as needed to protect the child and the public.

B. *Right to be Represented by a Lawyer*

Under Oklahoma law, children, parents, and other interested parties have the right to be represented by a lawyer.¹⁹⁸ However, the reality of juvenile proceedings is that few parties can afford to hire an attorney. The question then becomes whether a poor litigant is entitled to court-appointed counsel.

In 1968, the Oklahoma Legislature enacted two statutes providing for court-appointed counsel in juvenile proceedings.¹⁹⁹ Addressing first the issue of counsel for the child, the Legislature did not require that the child or the child's parents be indigent. The court must appoint separate and independent counsel, other than a district attorney, to represent the interests of the child.²⁰⁰ Counsel for the child must be appointed, regardless of any attempt by the parent or legal custodian to waive the child's right to representation.²⁰¹ "The policy favoring independent counsel for [the child is supported by] the Uniform Juvenile Court Act adopted by the American Bar Association in 1968, which provides in Rule 26(a) for separate counsel in juvenile proceedings if the interests of two or more parties conflict."²⁰²

The matter of independent representation by counsel, so that a child

198. *Id.* § 1104(a) (Supp. 1990).

199. See 1968 Okla. Sess. Laws 163 § 1 (codified as amended at OKLA. STAT. tit. 10, § 24 (Supp. 1990)) and 1968 Okla. Sess. Laws ch. 282 § 109 (codified at OKLA. STAT. tit. 10, § 1109(B) (Supp. 1990)).

200. OKLA. STAT. tit. 10, § 1109(B) (Supp. 1990).

201. *Id.*

202. *In re T.M.H.*, 613 P.2d 468, 470 (Okla. 1980).

may have his own attorney when his welfare is at stake, is the most significant and practical reform that can be made in the area of children and the law. The rights and sometimes the interests of children are frequently jeopardized in court proceedings because the best interests of a child are determined without resort to an independent advocate for the child. Courts may fail to perceive children will be affected by the outcome of the litigation, or that potential conflicts between the interests of the children and the interests of other parties require that the child have separate counsel. Too often the judge assumes the child's interests are adequately protected by the DHS. This position is undermined when, as here, DHS is challenged and as such it becomes an interested party, the source of the inquiry.²⁰³

The Oklahoma Supreme Court has held that the state is responsible for assuring that the child is adequately represented, and that such "representation shall not depend upon financial ability."²⁰⁴ While the Juvenile Code guarantees the parent, guardian or other legal custodian the right to counsel, their "right to court-appointed counsel is expressly predicated upon financial need."²⁰⁵ "The right to counsel implies that counsel will be provided without expense to the indigent."²⁰⁶ Parties are first advised of their right to counsel in the summons.²⁰⁷ Unfortunately, the Juvenile Code does not require the summons to state on its face that an attorney will be appointed by the court at no expense to any party who is unable to hire one. However, the Oklahoma Supreme Court recommends that judges advise all parties of their right to counsel and the procedure for requesting court-appointed counsel.²⁰⁸ Counsel must be appointed for indigents unless knowingly and intelligently waived.²⁰⁹

In addition to the right to counsel afforded parties under state law, parties may have the right to counsel, including court-appointed counsel if indigent, as a matter of federal constitutional law. For example, the United States Supreme Court held in *In re Gault*²¹⁰ that the due process clause of the Fourteenth Amendment²¹¹ guarantees juveniles the right to

203. *Id.* at 470.

204. *A.E. v. State*, 743 P.2d 1041, 1044 n.6 (Okla. 1987); *In re Christopher W.*, 626 P.2d 1320, 1322-23 (Okla. 1980).

205. *A.E. v. State*, 743 P.2d at 1044 n.6; *In re Christopher W.*, 626 P.2d at 1322.

206. *In re Chad S.*, 580 P.2d 983, 986 (Okla. 1978).

207. OKLA. STAT. tit. 10, § 1104(a) (1981) provides in relevant part: "[T]he summons shall . . . set forth the right of the child, parents, and other interested parties to have an attorney present at the hearing on the petition."

208. *In re F.K.C.*, 742 P.2d 774, 776 (Okla. 1980).

209. *In re J.W.*, 742 P.2d 1171, 1174 (Okla. Ct. App. 1987).

210. 387 U.S. 1, 36 (1967).

211. U.S. CONST. amend. XIV, § 1: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

appointed counsel in juvenile delinquency proceedings where the juvenile's freedom may be curtailed. The same reasoning should apply to proceedings to determine whether the child is in need of mental treatment because these proceedings also restrict the child's physical liberty, especially where the state seeks inpatient treatment.

The Court addressed parental rights to appointed counsel in a proceeding to terminate parental rights in *Lassiter v. Department of Social Services*.²¹² Analyzing the Sixth Amendment right to counsel²¹³ and the Fourteenth Amendment due process right to "fundamental fairness,"²¹⁴ the Court stated that an indigent's right to appointed counsel exists only where the litigant may lose physical liberty. It is the defendant's interest in personal freedom which triggers the right to appointed counsel.²¹⁵

In the context of a proceeding to determine whether a child is in need of treatment, the parents' personal freedom is not at risk, but rather the parents' right to "the companionship, care, custody and management of [their] children."²¹⁶ In Need of Treatment ("INT") proceedings infringe upon these rights by threatening their termination. Nevertheless, the Court in *Lassiter* declined to find a federal constitutional right to court-appointed counsel, leaving the decision to state courts on a case-by-case basis. The Court suggested that a wise public policy might require higher standards than the minimally tolerable ones found in the United States Constitution.²¹⁷ Oklahoma provides those higher standards.²¹⁸

C. Right to Jury Trial

Oklahoma guarantees the right to trial by jury for juvenile adjudicatory proceedings. In fact, Oklahoma is one of the few states which provides, by constitution and statute, "greater safeguards for the rights of juveniles than are required by the United States Constitution."²¹⁹

212. 452 U.S. 18 (1981).

213. U.S. CONST. amend. VI: "In all criminal prosecutions, the accused shall enjoy the right to . . . the Assistance of Counsel for his defence."

214. The Due Process Clause provides, "[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . ." *Id.* amend. XIV, § 1.

215. See *In re Gault*, 387 U.S. 1, 36 (1967). In juvenile delinquency proceedings in which the juvenile's freedom may be curtailed, the due process clause of the fourteenth amendment requires that the juvenile have the right to appointed counsel. *Id.*

216. *Lassiter v. Department of Social Serv.*, 452 U.S. 18, 27 (1981) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)).

217. *Id.* at 33.

218. *In re D.D.F.*, 801 P.2d 703, 706 (Okla. 1990).

219. *Alford v. Carter*, 504 P.2d 436, 439 (Okla. Crim. App. 1972).

Oklahoma's policy was initiated in 1909, when the Oklahoma Legislature enacted a statutory right to trial by jury for juvenile cases.²²⁰ In a 1968 election, the right was incorporated into Oklahoma's Constitution.²²¹ Today, a child or any person entitled to service of summons has the right to demand a trial by jury or the court may call a jury on its own motion.²²² The right to jury trial applies to two types of adjudicatory hearings: the hearing to determine whether the child is in need of treatment, and the hearing to terminate parental rights.²²³

By comparison, the United States Constitution does not mandate a trial by jury in juvenile proceedings.²²⁴ "While the Sixth Amendment's right to a jury trial in criminal prosecutions²²⁵ is binding on the state[s],"²²⁶ juvenile proceedings to determine whether a child is in need of treatment are civil in nature and "hence are outside the ambit of the Sixth Amendment."²²⁷ The right to a jury trial in suits at common law preserved by the Seventh Amendment²²⁸ applies only to civil suits filed in

220. Act approved March 19, 1909, ch. 14 § 2, 1909 Okla. Sess. Laws 167, 186 (codified as amended at OKLA. STAT. tit. 10, § 1110 (Supp. 1986).

221. The 1968 proposed amendment to the Oklahoma Constitution provided:

The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Hundred Dollars (\$100.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Hundred Dollars (\$100.00). . . . *Juries for the trial of . . . juvenile proceedings . . .* shall consist of six (6) persons.

OKLA. CONST. art. II, § 19 (Supp. 1969) (emphasis added). (Amended by State Question No. 459, Legislative Referendum No. 172, adopted at election held Sept. 17, 1968, eff. Jan. 13, 1969)

OKLA. CONST. art. II, § 19 was again amended by Act of Aug. 28, 1990, adopting S.J.R. No. 17, § 1, 1989 Okla. Sess. Laws, to read:

The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars (\$1,500.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars (\$1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars (\$10,000.00), and felony criminal cases shall consist of twelve (12) persons. *All other juries* shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.

Id. (emphasis added).

222. OKLA. STAT. tit. 10, § 1110 (Supp. 1986).

223. See *A.E. v. State*, 743 P.2d 1041, 1046-1047.

224. *Id.* at 1049 (Opala, J., concurring in part and dissenting in part).

225. U.S. CONST. amend. VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

226. *Duncan v. Louisiana*, 391 U.S. 145, 148-150 (1968); *Bloom v. Illinois*, 391 U.S. 194, 195-200 (1968).

227. *A.E.*, 743 P.2d at 1049 (Opala, J., concurring in part and dissenting in part) (discussing deprived children).

228. U.S. CONST. amend. VII: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be

federal court, not state court.²²⁹ In *McKeiver v. Pennsylvania*,²³⁰ the United States Supreme Court held that the due process clause does not mandate trial by jury in the adjudicatory phase of state juvenile delinquency proceedings.²³¹ If the Constitution does not mandate a jury trial for delinquency proceedings, then it does not mandate one for INT proceedings. Therefore, the question of trial by jury remains one of state law.²³²

D. Demand for Jury Trial and Peremptory Challenges

Prior to 1968, the Oklahoma Criminal Court of Appeals interpreted Oklahoma's statutory right to jury trial in juvenile proceedings as requiring a party to demand one. If a party failed to demand a jury, the right was considered waived.²³³ However, the Oklahoma Supreme Court recently held that the right to jury cannot be surrendered except by voluntary consent or waiver.²³⁴ Juvenile proceedings affect three distinct interests: "a parental claim to the child", the state's responsibility to protect its underage citizenry, and "the child's claim to a wholesome milieu free from . . . abuse and neglect."²³⁵ The adjudicatory hearing is tried to a six-person jury²³⁶ and each side is entitled to three peremptory jury challenges.²³⁷

E. The Rules of Evidence

The Oklahoma Rules of Evidence apply to adjudicatory hearings.²³⁸ A decision that the child is in need of treatment must be based on sworn testimony.²³⁹ The child has the right to cross-examine witnesses, unless the child stipulates to the facts,²⁴⁰ and, prior to investigation, must be

otherwise re-examined in any Court of the United States, than according to the rules of the common law."

229. *Pearson v. Yewdall*, 95 U.S. 294, 296 (1877); *Maryland Nat'l Ins. Co. v. District Court*, 455 P.2d 690, 692 (Okla. 1969).

230. 403 U.S. 528 (1971).

231. *Id.* at 545.

232. *A.E.*, 743 P.2d at 1045.

233. *Ex parte Norris*, 268 P.2d 302, 304-305 (Okla. 1954); *Ex parte Baeza*, 85 Okla. Crim. 76, 185 P.2d 242, 243 (1947).

234. *A.E.*, 743 P.2d at 1048; *In re D.D.F.*, 801 P.2d 703 (Okla. 1990).

235. *In re T.R.W.*, 722 P.2d 1197, 1200 (Okla. 1985) (quoting *In re T.H.L.*, 636 P.2d 330, 332 (Okla. 1981) (discussing deprived child proceedings)).

236. OKLA. CONST. art. II, § 19; OKLA. STAT. tit. 10, § 1110 (1987).

237. OKLA. STAT. tit. 12, § 575.1 (1988); *In re T.R.W.*, 722 P.2d at 1199-1200.

238. OKLA. STAT. tit. 10, § 1111 (1987).

239. *Id.*

240. *Id.*

advised of his right to remain silent.²⁴¹ There are special evidentiary rules for children who have been sexually or physically abused.²⁴² The child is presumed competent to give in-court testimony.²⁴³ Finally, the court has discretion to allow hearsay under the innominate exceptions of the Oklahoma Evidence Code.²⁴⁴

F. *The Burden of Proof, the Standard of Proof, and Evidentiary Requirements*

The state bears the burden of proving the child is in need of treatment.²⁴⁵ The standard of proof the state bears is more than mere preponderance of the evidence; the state must prove its case by the higher standard of clear and convincing evidence.²⁴⁶ This higher standard of proof is required not only by state law, but also by the United States Constitution.²⁴⁷ Evidence must be presented of the child's mental health examination²⁴⁸ conducted by an independent²⁴⁹ qualified mental health professional²⁵⁰ pursuant to section 1105.²⁵¹ Evidence must also be presented that it is in the child's best interest to be made a ward of the court.²⁵²

G. *Referees*

Judges with juvenile docket responsibility in the larger counties in Oklahoma (population greater than 100,000) may appoint specially-qualified lawyers to act as referees.²⁵³ The referee hears the case in the first instance in the same manner provided for the hearing of cases by the court. "At the conclusion of the hearing, the referee transmits to the

241. *Id.* See also *id.* at § 1109(A) (Supp. 1990) (questioning of children; presence of parent or parental substitute; notice of constitutional and legal rights including court appointed counsel for indigents).

242. See OKLA. STAT. tit. 12, § 2803.1 (Supp. 1990); OKLA. STAT. tit. 10, § 1147 (1987); OKLA. STAT. tit. 10, § 1148 (1987). See also *Coy v. Iowa*, 487 U.S. 1012, 1020-21 (1988).

243. OKLA. STAT. tit. 12, § 2601 (1981).

244. *Id.* §§ 2803(24), 2804(B) (5) (1981); cf. *Idaho v. Wright*, — U.S. —, 110 S. Ct. 3139 (1990).

245. OKLA. STAT. tit. 10, § 1114(B) (Supp. 1990); See *id.* at § 1109(E) (Supp. 1990).

246. *Id.* § 1114(B) (Supp. 1990).

247. See *Addington v. Texas*, 441 U.S. 418, 433 (1979) for the proposition that clear and convincing is the standard of proof required by due process for civil proceedings under state law to commit an individual involuntarily to a mental hospital.

248. OKLA. STAT. tit. 10, § 1101(21)(Supp. 1990) defines the term "mental health examination."

249. *Id.* at § 1101(20) defines the term "independent."

250. *Id.* at § 1101(19) defines the term "qualified mental health professional."

251. *Id.* § 1105(B).

252. *Id.* § 1114(B).

253. *Id.* § 1126(a) (1981).

court all papers relating to the case, along with the referee's written findings of fact, conclusions of law, and recommendations."²⁵⁴ "Notice of the referee's findings, conclusions and recommendations must be given to the parent, guardian or custodian of the child, or to any other person concerned whose case has been heard by the referee. A hearing by the district court must be allowed upon the filing of a request with the court within three days after service of notice of the referee's findings and recommendations."²⁵⁵ The purpose of the hearing is to allow objections to all or parts of the referee's findings and conclusions, and to resolve those objections. "[W]here objections are made to the referee's report, the district court may reopen the matter for further evidence."²⁵⁶ However, if the only questions before the court are matters of law, no evidentiary hearing is required.²⁵⁷ If no hearing is requested, the referee's findings and recommendations, when confirmed by court order, become the court's decree.²⁵⁸

H. *The Court's Order at the Conclusion of the Adjudicatory Hearing*

"If the factfinder concludes that the allegations of the petition are not supported by the evidence, the court dismisses the petition and discharges the child from any detention or restriction previously ordered."²⁵⁹ "The child's parents, guardian, or other legal custodian are also discharged from any restriction or other previous temporary order."²⁶⁰ Once the court's adjudicatory order becomes final, the court has no authority to exercise further jurisdiction over the child in that proceeding.²⁶¹

The factfinder considers evidence that includes, but is not limited to, the child's mental health examination by an independent qualified mental health professional and whether it is in the child's best interest to be made a ward of the court. If the factfinder concludes that the allegations of the petition are supported by clear and convincing evidence, the court sustains the petition and enters an order that the child is in need of treatment ("INT").²⁶² The court's order must contain the following findings

254. *Id.*

255. *Id.* § 1126(b).

256. *In re Ernest J. C.*, 578 P.2d 352, 355 (Okla. 1978).

257. *Id.*

258. OKLA. STAT., tit. 10, § 1126(b) (1981).

259. *Id.* § 1113 (1987).

260. *Id.*

261. *In re Ivey*, 535 P.2d 281, 283 (Okla. 1975) (Syllabus by the Court).

262. OKLA. STAT. tit. 10, § 1114(B) (Supp. 1990).

of fact and findings of compliance:

- (1) The child's correct, full legal name, and
- (2) the child's date of birth.

Findings of Compliance with:

- (1) The Federal Indian Child Welfare Act, 25 U.S.C. § 1901-1963, and
- (2) The Uniform Child Custody Jurisdiction Act, title 10, section 1601 *et. seq.* of the Oklahoma Statutes.²⁶³

The court's order adjudicating the child INT does not preclude a subsequent order adjudicating the child delinquent, in need of supervision, or deprived.²⁶⁴ Nor does it vacate any order of adjudication previously entered.²⁶⁵ The same child may have multiple adjudications in multiple categories.

V. DISPOSITION

A. *The Dispositional Hearing*

Juvenile proceedings are bifurcated proceedings. If the child is adjudged INT at the adjudicatory hearing, the court then conducts a second hearing called the dispositional hearing.²⁶⁶ Its purpose is to determine the order of disposition for a child adjudged a ward of the court.²⁶⁷ Strict rules of evidence do not apply. The court may admit and rely upon all evidence, including oral and written reports, that may be helpful to determine a disposition best serving the interests of the child and public.²⁶⁸ The court may rely upon this evidence to the extent of its probative value, even though the evidence might not have been admissible in the adjudicatory hearing.²⁶⁹ The point is to get as much information to the judge as possible so that he or she will have a complete picture of the child and can tailor the dispositional order to meet the child's special needs.

263. Okla. Dist. Ct. R. 8.2, OKLA. STAT. tit. 12, ch. 2 App. (1988) provides:

[A]ll orders of adjudication in juvenile proceedings, [and] termination of parental rights . . . resulting in the adjudication of status, custody or wardship of minor children, shall contain a findings of compliance with 25 U.S.C.A. 1901 *et. seq.* (Indian Child Welfare Act of 1978), 10 Okla. Stat. § 1601 *et. seq.* (Uniform Child Custody Jurisdiction Act). The trial court shall in all such proceedings make findings of fact as to the child's correct, full legal name, and date of birth and all instruments memorializing such decrees, orders and judgments as required by 12 OKLA. STAT. § 32.2 shall recite the findings required hereby.

264. OKLA. STAT. tit. 10, § 1114(B) (Supp. 1990).

265. *Id.*

266. *Id.* § 1115(a) (1981).

267. *Id.* § 1101(9) (Supp. 1990).

268. *Id.* § 1115(a) (1988).

269. *Id.*

Before making its order of disposition, the court advises the district attorney, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and conclusions of reports prepared for the court's use and considered by it, and afford fair opportunity, if requested, to controvert them.²⁷⁰ The practice in Texas County is that copies of all reports filed with the court must be mailed by the maker of the reports to all attorneys and unrepresented parties. This permits everyone to know what the court is relying on in making its dispositional order. The makers of reports must file a certificate of mailing. The court's dispositional order includes a specific finding and order concerning the parents' liability and accountability for the child's care and maintenance, except where custody is placed with both parents.²⁷¹

The court may adjourn the dispositional hearing for a reasonable period to receive reports or other evidence.²⁷² If the court grants such a continuance, the court makes an order for the child's detention, or release from detention subject to court supervision.²⁷³ In scheduling investigations and hearings, the court gives priority to proceedings where the child has been removed from the home.²⁷⁴

The court has several dispositional orders from which to choose. First, if it is consistent with the child's welfare, the child is placed with a parent or legal guardian on probation or under supervision in his own home.²⁷⁵ If the court finds that the conduct of a parent, guardian, legal custodian, stepparent or other adult living in the home has contributed to the child's need for treatment or supervision, the court may issue a written order specifying the conduct to be followed by such person towards the child.²⁷⁶ This specified conduct must reasonably be expected to prevent the child from becoming in need of treatment or supervision, delinquent or deprived.²⁷⁷ The court order remains in effect for a time period not to exceed one year.²⁷⁸ The court may then extend or renew the order.²⁷⁹

270. *Id.* § 1115(b) (1981).

271. *Id.* See also § 1121 (Supp. 1990) (care and maintenance of the child; orders for enforcement); the child support guidelines; and *id.* § 1120(D) (DHS investigates parents' ability to pay child support).

272. *Id.*, § 1115(c) (1981).

273. *Id.*

274. *Id.* § 1115(d) (1981).

275. *Id.* § 1116(A)(1) (Supp. 1990).

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

The court may place the child in the custody of a suitable person elsewhere, upon conditions determined by the court.²⁸⁰ The court may require the parent or other person to post a bond, with approved sureties, for compliance with its order.²⁸¹ Secondly, the court may commit the child to the custody of a private institution or agency, including any institution established and operated by a county authorized to care for children or to place them in family homes.²⁸² Thirdly, the court may order the child to receive counseling or other community-based services.²⁸³ Finally, the court may commit the child to the custody of the Department of Human Services.²⁸⁴ When the court commits a child to DHS custody, the court orders the sheriff to deliver the child to an institution, or other place designated by DHS.²⁸⁵ The transportation costs are paid from the county's general fund.²⁸⁶

B. *Inpatient Mental Health Care and Treatment*

When the child has been adjudicated in need of treatment, the court orders the child to receive "the least restrictive mental health care and treatment appropriate for the treatment needs of the child until such time as such care and treatment is no longer necessary."²⁸⁷ Whenever possible, the child should receive mental health care and treatment on an outpatient basis. Inpatient care and treatment should be used only as a last resort. Permissible less restrictive alternatives to inpatient mental health care include: outpatient counseling services; services provided in the child's home, which may be referred to as "home-based services"²⁸⁸; "day treatment"²⁸⁹ or day hospitalization services; respite care; foster

280. *Id.*

281. *Id.*

282. *Id.* § 1116(A)(2). The court must select a "private institution or agency . . . that is licensed by the [DHS] or any other state department supervising or licensing private institutions and agencies." If the institution or agency is in another state, the court must select one licensed "by the analogous department of that state." When the court commits a child to an institution or agency, it transmits with the commitment order a summary of its information concerning the child. The institution or agency gives the court such information concerning the child as the court requires at any time. *Id.*

283. *Id.* § 1116(A)(3) (1981 & Supp. 1990).

284. *Id.* § 1116(A)(4) (Supp. 1990).

285. *Id.* § 1143 (1981).

286. *Id.*

287. *Id.* § 1116(A)(5)(a) (Supp. 1990).

288. *Id.* § 1101(22) (Supp. 1990) (outpatient counseling services provided in the child's home).

289. *Id.* § 1101(14) (Supp. 1990) ("day treatment [is] a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility").

care; group home²⁹⁰ care that provides for the delivery of services specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.”²⁹¹ An INT child’s eligibility for inpatient mental health care requires an exact procedure: First, the court must thoroughly consider less restrictive alternatives to inpatient treatment.²⁹² Second, the court must find clear and convincing evidence²⁹³ that either: (1) “reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child,”²⁹⁴ or the child’s condition “is such that less restrictive alternatives are unlikely to meet the [child’s] mental health treatment needs. . . .”²⁹⁵ The court may then authorize the parent, legal guardian, or legal custodian (other than the Department of Human Services) “to make arrangements for the [child’s] admission . . . to a public or private mental health facility²⁹⁶ appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment. . . .”²⁹⁷ The court “may order the Department of Human Services (DHS) to assist the [child’s] parent or legal

290. *Id.*, § 1101(15) (Supp. 1990) (“group home [is] a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. [A] group home may also offer a program within the community to meet the specialized treatment needs of its residents”).

291. *Id.* § 1101(22) (Supp. 1990).

292. *Id.* § 1116(A)(5)(a) (Supp. 1990).

293. *Id.* § 1116(A)(5)(a) (Supp. 1990).

294. *Id.* § 1116(A)(5)(a) (1) (Supp. 1990).

295. *Id.* § 1116(A)(5)(a)(2) (Supp. 1990).

296. *Id.* § 1101(20) (Supp. 1990) defines “mental health facility” as:

- a. a facility or program operated by the Department of Mental Health and Substance Abuse Services or a facility or program operated by a private agency which offers outpatient or residential care and treatment services to children in need of treatment including but not limited to public or private hospitals, institutions, or agencies, comprehensive mental health centers, clinics, satellites, day treatment facilities, halfway homes, and group homes. A facility which or a program that offers outpatient care and treatment services to children in need of treatment shall be certified by the Department of Mental Health and Substance Abuse Services. A facility which offers residential treatment services to children in need of treatment shall be licensed by the Department of Mental Health and Substance Abuse Services except that a facility accredited by the Joint Commission on Accreditation of Hospitals to provide care and treatment to children in need of treatment shall be deemed to meet rules and regulations promulgated by the Department of Mental Health and Substance Abuse Services for licensure, or
- b. a child guidance center operated by the Department of Health, or
- c. a facility or program operated by the State Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the Department.

297. *Id.* § 1116(A)(5)(b)(1) (Supp. 1990).

guardian in making [these] arrangements. . . ."²⁹⁸ If a child who is eligible for inpatient mental health treatment is in the custody of (DHS), "the court may authorize the Department to place the child in a mental health facility appropriate for the [child's] inpatient treatment needs. . . ."²⁹⁹ If the court places the child outside the home and finds that the parent, guardian, legal custodian, stepparent, or other adult living in the home has contributed to the child's status, the court may order such person to participate in a treatment or placement plan prescribed by DHS or other responsible agency.³⁰⁰ In the case of a child placed outside the home, the court must determine whether reasonable efforts were made to return the child to the home.³⁰¹ The court may also dismiss the petition or otherwise terminate its jurisdiction for good cause at any time.³⁰²

C. *Religious Faith of Parents or Child*

When the court places the child in the custody of an individual, private agency or institution, the court must, if possible, select an entity of the same religious faith as the parents.³⁰³ When parents are of different religious persuasions, and the faith of the child cannot be ascertained, the court will attempt to place the child in an environment conducive to the faith of either parent.³⁰⁴ However, the court has complete discretion to place the child where the child's total needs will best be served.³⁰⁵

D. *Mileage and Witness Fees*

The court may allow mileage to witnesses and reimbursement for expert witnesses as in civil actions.³⁰⁶ However, these fees are not tendered in advance of the hearing.³⁰⁷

E. *Rights and Duties of the Person or Agency Receiving the Child's Custody*

Once the court transfers the child's custody under section 1116,³⁰⁸

298. *Id.*

299. *Id.* § 1116(A)(5)(b)(2) (Supp. 1990).

300. *Id.* § 1116(A)(6).

301. *Id.* § 1116(A)(10). *See also* 1990 Okla. Sess. Laws 272, § 2.

302. *Id.* § 1116(A)(9).

303. *Id.* § 1119 (1981).

304. *Id.*

305. *Id.*

306. *Id.* § 1124 (Supp. 1989).

307. *Id.*

308. *Id.* § 1116 (Supp. 1990).

the person, institution, agency, or DHS receiving custody is responsible for the child's care and control.³⁰⁹ The custodian has the duty and authority to provide the child "food, clothing, shelter, ordinary medical care, education, discipline, and, in an emergency, authorize surgery or other extraordinary care."³¹⁰ Emergency psychiatric admission to a hospital or mental health facility³¹¹ requires court order.³¹² The custodian may arrange inpatient mental health care and treatment only after an INT petition is filed and the court finds the child is eligible for inpatient mental health care and treatment.³¹³ However, the custodian may provide the child outpatient mental health services, "including an outpatient mental health examination, counseling, education, rehabilitation, or other similar services . . . as necessary and appropriate even in the absence of a specific court order for such services."³¹⁴

The costs of medical care, surgery, and extraordinary care are "charged to the appropriate agency where the child qualifies for the care under law, rule, regulation or administrative order or decision."³¹⁵ However, the parent continues to bear the obligation to provide for the child's support as otherwise provided by law.³¹⁶ The court also may order a parent to make child support payments or payments for medical care or treatment, including mental health care or treatment, to the custodian of the child.³¹⁷ The child continues to be eligible for any benefits provided through public funds.³¹⁸ The custodian is not civilly liable for damages for either authorizing or not authorizing emergency surgery or extraordinary care as long as the decision is deferred to competent medical authority.³¹⁹

The person receiving custody is entitled to notice of court proceedings regarding the child.³²⁰ The custodian also has the right to intervene as a party to all court proceedings concerning the child's care and custody, including but not limited to, "adjudication, disposition, review of

309. *Id.* § 1117(A)(1).

310. *Id.*

311. *Id.* § 1107(F). *See also id.* § 1117(A)(1).

312. *Id.* § 1120(C). *See also id.* § 1117(A)(1)(a).

313. *Id.* § 1117(A)(1)(b).

314. *Id.* § 117(A)(1).

315. *Id.* § 1117(A)(2).

316. *Id.* § 1117(A)(3)(a).

317. *Id.* § 1117(A)(3)(b).

318. *Id.* § 1117(A)(3)(c).

319. *Id.* § 1117(A)(4).

320. *Id.* §§ 1105 (Supp. 1990) and 1115 (1981). *See also id.* § 1117(B) (Supp. 1990).

disposition, and termination of parental rights.”³²¹

F. *Public Policy Concerning Children Placed in DHS Custody*

Oklahoma recognizes the fundamental rights of parenthood,³²² as well as the state’s responsibility to assist families in providing necessary education and training.³²³ The legislative intent when placing “each child adjudicated to be a ward of the court” into the custody of DHS is to “assure such care and guidance of the child, preferably in [the child’s] home, as will serve the spiritual, emotional, mental and physical welfare of the child and will preserve and strengthen the family ties of the child whenever possible. . . .”³²⁴ DHS removes a “child from the custody of parents only when the welfare of the child or the safety and protection of the public cannot be adequately safeguarded without removal. . . .”³²⁵ If a child must be removed from his or her family, Oklahoma’s policy is “to secure for the child custody, care and discipline consistent with the best interests and treatment needs of the child.”³²⁶

DHS must assess “each child committed to it to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child. . . .”³²⁷ DHS “assessment shall include an investigation of the personal and family history of the child, the child’s environment, and any physical or mental examinations considered necessary.”³²⁸ In making this assessment, DHS may use any public or private facilities which offer aid to DHS in determining the child’s correct placement.³²⁹

G. *DHS Placement of an INT Child*

If the court places an INT child in DHS custody, DHS may place the child in his own home, the home of a relative, a foster home, a group

321. *Id.* § 1117(B) (Supp. 1990). The intervention is made by application.

322. *Id.* § 1135(A) (Supp. 1986).

323. *Id.* Oklahoma also recognizes its responsibility “to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation and reintegration of juvenile delinquents and the protection of the welfare of the general public.” *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.* § 1135(B). If the child is delinquent, DHS must also consider the protection of the public. *Id.*

328. *Id.*

329. *Id.* § 1135(C).

home,³³⁰ a transitional living program,³³¹ an independent living program,³³² or in any other community-based³³³ child care facility³³⁴ under the jurisdiction or licensure of DHS appropriate for the child's care. DHS may also provide for the child's outpatient care and treatment³³⁵ by utilizing, to the maximum extent possible, "the services available through: the guidance centers operated by the State Department of Health; and the Department of Mental Health and Substance Abuse Services; and community-based private nonprofit agencies and organizations."³³⁶

DHS may place an INT child found by the court to be eligible "to receive inpatient care and treatment as provided in Section 1116³³⁷ in a [DHS]-operated treatment center or other public or private mental health facility."³³⁸

330. A "group home [is] a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents." *Id.* § 1101(15) (Supp. 1990).

331. A "transitional living program" is defined as:

a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

Id. § 1101(16)

332. An "independent living program" is defined as:

a program designed to assist a child to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services.

Id. § 1101(17).

333. "Community-based" would include:

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

Id. § 1101(13).

334. "Facility" is defined as:

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

Id. § 1101(11).

335. *Id.* § 1135.1(A)(1).

336. *Id.* § 1135.1(B). *See also id.* § 1135.2 (Services for INT children—Placement disputes).

337. *Id.* § 1116.

338. *Id.* § 1135.1(A) (2). A "mental health facility" is defined as:

DHS also has the option to place an INT child "with the Department of Mental Health and Substance Abuse Services upon consent of the Commissioner of Mental Health and Substance Abuse Services or his designee."³³⁹

DHS must regularly review the case of each INT child in its custody receiving inpatient care and treatment.³⁴⁰ The purpose of the review is to determine whether continued inpatient treatment is appropriate for the child.³⁴¹ The reviews must occur at intervals of not more than sixty days³⁴² in order to have the child removed from the facility as soon as appropriate. These reviews must be conducted by a qualified mental health professional.³⁴³ Once the child no longer requires inpatient care and treatment, DHS must place the child as provided in section 1135.1(A)(1).³⁴⁴

The 1990 Oklahoma Legislature added a curious provision to section 1135.1 that is an invitation to disaster. The full text of the provision reads:

Nothing in this section [1135.1] shall be interpreted to require the Department [DHS] to place a child found by a court to be eligible for inpatient mental health treatment in a mental health facility when the Department determines that such placement is inappropriate or unnecessary for the treatment needs of the child.³⁴⁵

-
- a. a facility or program operated by the Department of Mental Health and Substance Abuse Services or a facility or program operated by a private agency which offers outpatient or residential care and treatment services to children in need of treatment including but not limited to public or private hospitals, institutions, or agencies, comprehensive mental health centers, clinics, satellites, day treatment facilities, halfway homes, and group homes. A facility which or a program that offers outpatient care and treatment services to children in need of treatment shall be certified by the Department of Mental Health and Substance Abuse Services. A facility which offers residential treatment services to children in need of treatment shall be licensed by the Department of Mental Health and Substance Abuse Services except that a facility accredited by the Joint Commission on Accreditation of Hospitals to provide care and treatment to children in need of treatment shall be deemed to meet rules and regulations promulgated by the Department of Mental Health and Substance Abuse Services for licensure, or
 - b. a child guidance center operated by the State Department of Health, or
 - c. a facility or program operated by the State Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the Department.

Id. § 1101(20).

339. *Id.* § 1135.1(A)(2).

340. *Id.* § 1135(B).

341. *Id.*

342. *Id.*

343. *Id.*

344. See notes 338, 339 and accompanying text.

345. *Id.* § 1135.1(C) (Supp. 1990).

As a result, DHS, not the court, makes the final decision whether the child receives inpatient mental health treatment. This is not only bad law, violating the doctrine of separation of powers, but dangerous for the child and the public.

The proper time for the court to determine whether the child should receive inpatient treatment is at the dispositional hearing which provides all parties opportunity for a full and fair hearing. But under section 1135.1(C), DHS can ignore the court's finding. The proper procedure should be for DHS to appeal the court's finding, not ignore it. Further, if DHS ignores the court's finding that the child needs inpatient treatment, DHS will certainly be sued for failing to provide needed treatment.

One solution is for the court to reassign custody. After all, the child is a ward of the court, not DHS. It was the court that placed the child in DHS custody in the first place. The court can and should remove the child from DHS custody if DHS will not provide the needed treatment. A better solution is for the Legislature to amend the statute so that DHS must place the child as ordered by the court.

H. *Parents' Financial Responsibility for a Child Placed Outside the Home*

In any hearing concerning the child's status, the court can hold parents who have been served with notice of the hearing liable for the child's care.³⁴⁶ After adjudication, the court can order DHS to investigate the financial ability, occupation and earning capacity of the child's parent, legal guardian or custodian.³⁴⁷ The court can order the parents to pay child support including, but not limited to, all or part of the medical care and mental health services.³⁴⁸ The court may require the parents to post a bond or other security to assure payment.³⁴⁹ The court may resort to execution of bond or punish the parent for contempt for noncompliance.³⁵⁰ The court can increase, decrease, or otherwise modify its orders for child support, depending on the child's needs and the parents' ability to pay.³⁵¹ The court may order the child support payments to be made

346. *Id.* § 1121(A) (Supp. 1990).

347. *Id.* § 1120(D) (Supp. 1990). DHS may conduct a similar investigation at the request of a sister state court. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.* § 1121(B).

directly to the person, organization or institution having the child's custody, or to the court clerk.³⁵²

The court may also require the parents of an adjudicated INT child to reimburse the court fund, in whole or in part, for any disbursements made from the court fund in connection with the case, "including, but not limited to, court appointed attorney's fees, expert witness fees, sheriff's fees, witness fees, transcripts and postage."³⁵³ A financially able parent who willfully fails to pay court costs or reimburse the court fund may be held in contempt.³⁵⁴ If the parent cannot pay all the money immediately, the court can order the parent to make installment payments. The court sets the amount and due date of each installment.³⁵⁵ The court may order the parent to make installment payments even though the court has previously found the parent indigent.³⁵⁶ For example, the parent may hold a job that earns a modest periodic wage. The parent's assets may be so modest that the parent cannot afford to hire his or her own lawyer, therefore qualifying as an indigent entitled by state law to a court appointed lawyer. However, this does not mean that the parent gets a free ride. The court can require the parent to make reasonable periodic payments to pay court costs or reimburse the court fund.³⁵⁷

If the petition is filed and the child appears to need nursing, medical or surgical care, the court may order the parent or other person responsible for the child's care and support to provide the care.³⁵⁸ If the parent or other person fails to provide the child's care, the court, after due notice, may enter an order for the child's care.³⁵⁹ The expenses for the child's care are a charge upon the county when approved by the court.³⁶⁰

352. *Id.* § 1121(B).

353. *Id.* § 1116(H).

354. *Id.* Upon conviction, the parent is punished pursuant to OKLA. STAT. tit. 21, § 566 (1981).

355. OKLA. STAT. tit. 10, § 1116(H) (Supp. 1990).

356. *Id.*

357. Nothing in this subsection shall be interpreted to:

- a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or
- b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person institution, agency or Department having custody of the child, or
- c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

Id. § 1117(A) (3).

358. *Id.* § 1120(B).

359. *Id.*

360. *Id.*

However, the court may require the person having custodial duty to support the child by paying all or part of the expenses.³⁶¹

Any payment of public assistance money by DHS for a child in DHS custody creates a debt due the State of Oklahoma by the child's parents.³⁶² The DHS is subrogated to the child's right to prosecute a support action or administrative remedy to obtain reimbursement from parents.³⁶³

I. *Review Hearings*

If the court's dispositional order removes the child from the parent's custody, the court must conduct a review hearing at least once every six months until the child is returned to parental custody.³⁶⁴ The purpose of the review is to prevent a child's case from getting lost in the system.

If the court places the child in foster care, then no later than eighteen months after this placement and every twelve months thereafter, the court must conduct additional dispositional hearings to consider whether:

the child should be returned to his parents or another family member; the child should be continued in foster care for a specified period; the rights of the child's parents should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.³⁶⁵

If the court finds that a child adjudicated INT is eligible for inpatient mental health treatment and the child is thereafter placed in a hospital or mental health facility, the court must review the case at least every sixty days until the child is discharged.³⁶⁶ The purpose of frequent reviews is to release the child from the mental hospital as soon as appropriate.

J. *Modification of Decrees or Orders*

Children are not static objects. They grow and develop and their needs change over time. Therefore, the court may modify its decrees and

361. *Id.*

362. OKLA. STAT. tit. 56, § 238 (Supp. 1990).

363. *Id.*

364. OKLA. STAT. tit. 10, § 1116(B) (Supp. 1990).

365. *Id.* See also Adoption Assistant and Child Welfare Act of 1980, Pub. L. 96-272 (codified in scattered sections of 42 U.S.C., in particular §§ 671(a)(15), (16), 672(a), 675(1), and 675(5)(B)).

366. OKLA. STAT. tit. 10, § 1116(C) (Supp. 1990).

orders at any time.³⁶⁷ Anyone who willfully violates any court order is guilty of indirect contempt of court.³⁶⁸

VI. APPEALS

An aggrieved party may appeal to the Oklahoma Supreme Court³⁶⁹ by following the same procedure as provided for other appeals.³⁷⁰ The record on appeal of the district court's order of adjudication must be completed and the appeal perfected within sixty days.³⁷¹

Pendency of an appeal does not suspend a district court order³⁷² nor discharge the child from the custody of the court, person, institution, or agency in whose care the child has been committed, except by order of the Oklahoma Supreme Court.³⁷³ Similarly, the pendency of an appeal from a district court order of adjudication does not prevent the court from holding a dispositional hearing unless the Oklahoma Supreme Court orders otherwise.³⁷⁴

If the Oklahoma Supreme Court does not dismiss the proceedings and discharge the child, the Court affirms or modifies the district court's order and remands the matter to the jurisdiction of the district court for supervision and care.³⁷⁵ The child then remains under the district court's jurisdiction the same way as if an appeal had not been taken.³⁷⁶ If an appellate court issues a written opinion, only the initial of the child's surname is used in order to preserve the child's privacy.³⁷⁷

VII. PRIVATE LAW PROCEEDINGS

Through the mid-1970's, most states permitted parents voluntarily to admit their children to inpatient mental hospitals without any form of

367. *Id.* § 1118 (1981). There are two statutory exceptions to this rule: (1) The court cannot modify an order terminating parental rights, or (2) an order certifying the juvenile as an adult. *Id.*

368. *Id.* § 1122 (1981). The punishment is a fine of up to three hundred dollars or imprisonment in the county jail for up to thirty days, or both. *Id.*

369. *Id.* § 1123(A). See also Rules of the Supreme Court of Oklahoma, tit. 12, Ch. 15, App. 1 (Supp. 1990); Rules of Appellate Procedure in Civil Cases, at App. 2; and Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, at App. 3.

370. *Id.* tit. 10, § 1123(A) (1981).

371. *Id.* § 1123(B).

372. *Id.* § 1123(C).

373. *Id.*

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.* § 1123.1.

judicial oversight.³⁷⁸ In 1979, the United States Supreme Court, in *Parham v. J. R.*³⁷⁹, held that a parent's decision to commit a child does not violate the child's constitutional rights so long as a "neutral factfinder" confirms that inpatient treatment is medically necessary. The Court believed a mental hospital's admitting staff could play the role of "neutral factfinder."³⁸⁰ One commentator has noted:

Parham left the door open for states to provide protections to minors beyond the articulated constitutional minimum. Presently, state statutes vary in the protections they afford minors for whom mental hospitalization is sought.³⁸¹ These statutes range from those that apply virtually the same procedural protections and substantive commitment criteria to minors as to adults³⁸² to those that require little more than the *Parham* minimum.³⁸³ The dimensions on which state laws vary include: the extent to which they require *any* type of review prior to the admission of a minor beyond that performed by admitting staff;³⁸⁴ the timing of such review;³⁸⁵ whether such review is mandatory or triggered by petition;³⁸⁶ the form and process of such review and the concomitant rights of prospective patients (such as right to counsel);³⁸⁷ the substantive standards applied in such review;³⁸⁸ the role, if

378. Note, *Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates*, 40 STAN. L. REV. 773, 780 (1988) (footnote omitted).

379. 442 U.S. 584 (1979), cited in *id.*

380. Note, *supra* note 378, at 781-82.

381. See J. KNITZER, UNCLAIMED CHILDREN 113-29 (1982), cited in note 53 in original. *Id.*

382. See, e.g., VA. CODE ANN. § 37.1-67.3 (Supp. 1987), § 16.1-241(B) (1982) & VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT INSTRUCTION NO. 60 (Jan. 22, 1979). Note, *supra* note 378, at 781-782 n.54.

383. See, e.g., ARIZ. REV. STAT. ANN. §§ 36-518, 36-519 (Supp. 1986) (permitting admission of a minor upon application of a parent, guardian, or custodian, following a determination by the medical director of the admitting facility both that the "child needs an inpatient evaluation or will benefit from care and treatment of a mental disorder or other personality disorder or emotional condition in the agency" and that "the evaluation or treatment goals can[not] be accomplished in a less restrictive setting"). Note, *supra* note 378, at 781 n.55.

384. Compare, e.g., IDAHO CODE § 66-318 (Supp. 1987) (permitting admission of a minor upon application by a parent or guardian after a finding by the medical director of the accepting facility that the minor is mentally ill and that hospitalization is medically necessary) with VA. CODE ANN. § 37.1-67.3 (Supp. 1987), § 16.1-241(B) (1982) (requiring a judicial commitment hearing for any person, including a minor, who is unwilling to accept voluntary admission or who is incapable of making a voluntary admission decision). Note, *supra* note 378, at 781 n.56.

385. Compare, e.g., VA. CODE ANN. §§ 37.1-67.1, -67.3 (Supp. 1987), § 16.1-241(B) (1982) (requiring that the judicial commitment hearing precede admission, and requiring a judicial order for a 48-hour pre-admission emergency detention) with N.C. GEN. STAT. § 122C-223(a) (1986) (requiring a judicial hearing within 10 days after a minor is admitted). Note, *supra* note 378, at 781 n.57.

386. Compare, e.g., N.C. GEN. STAT. § 122(C)-223(a) (1986) (requiring a post-admission judicial hearing in all cases) with LA. REV. STAT. ANN. §§ 28:54, :57(F)-(G) (West Supp. 1987) (requiring a post-admission judicial hearing only upon objection by the minor or the minor's parent or guardian). Note, *supra* note 378, at 781-82 n.58.

387. Those state statutes that provide for a judicial hearing generally also provide for a right to counsel, although some are silent on this matter. J. KNITZER . . . (summary of statutory provisions regarding review of admissions and access to counsel). Some statutes explicitly grant a range of

any, minors of various ages are given in choosing or refusing admission and in triggering any review process;³⁸⁹ and the extent to which admissions to private facilities are governed by statute.³⁹⁰

Of course, the *Parham* presumption that admitting staff can play the role of a "neutral factfinder" is subject to challenge, especially in the context of a for-profit mental hospital. "Psychiatric hospitalization of juveniles no longer occurs primarily in state-run and non-profit settings. The admission of juveniles for inpatient mental health treatment is now 'big business.' Private hospital admissions account for the large majority of juvenile psychiatric admissions, and the numbers continue to rise."³⁹¹ By definition, the goal of a for-profit mental hospital is to make money. That goal may conflict with the child's best interests. Put simply, the admitting staff of a for-profit mental hospital cannot fulfill the role of the

procedural rights. See, e.g., VA. CODE ANN. § 37.1-67.3 (Supp. 1987), § 16.1-241(B) (1982) (providing for: an adversarial hearing with representation by counsel who will be court-appointed if the prospective patient cannot afford one, notice of the standard upon which commitment may be ordered, the right to appeal to circuit court for jury trial, the right to obtain independent evaluation, and the right to present witnesses at the hearing); CONN. GEN. STAT. §§ 17-205c(d)-(e) -205d(a) (Supp. 1987) (providing for the following rights: appointment of counsel, appointment of a three-judge court of which a judgment of at least two judges is necessary to commit a child, the opportunity to be present at hearing, the opportunity to present evidence and cross-examine witnesses, and notice to child and parent). Note, *supra* note 378, at 781-82 n.59.

388. Compare, e.g., VA. CODE ANN. § 37.1-67.3 (Supp. 1987), § 16.1-241(B) (1982) (requiring for commitment a judicial finding that the minor "(i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment") with N.M. STAT. ANN. § 43-1-16.1(G) (1978) (requiring for commitment a judicial finding "(1) that as a result of mental disorder or developmental disability the minor needs and is likely to benefit from the treatment or habilitation services proposed; and (2) that the proposed commitment is consistent with the treatment needs of the minor and with the least drastic means principle") and CONN. GEN. STAT. § 17-205d(e) (Supp. 1987) (requiring a judicial finding that "the child suffers from a mental disorder, is in need of hospitalization for treatment, and such treatment is available, and such hospitalization is the least restrictive available alternative") and IOWA CODE ANN. § 229.2 (West 1985) (requiring a judicial finding that the admission is "in the best interests of the minor and is consistent with the minor's rights," although the latter requirement is not defined). Note, *supra* note 378, at 782 n.60.

389. Compare, e.g., VA. CODE ANN. § 37.1-67.3 (Supp. 1987), § 16.1-241(B) (1982) & VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENTAL INSTRUCTION No. 60 (Jan. 22, 1979) (on file with the *Stanford Law Review*) (permitting minors of any age to request pre-admission review) with ILL. ANN. STAT. Ch. 91 1/2, paras. 3-505, 3-507 (Smith-Hurd Supp. 1986) (permitting minors age 12 or older to request post-admission review). Note, *supra* note 378, at 782 n.61.

390. Compare, e.g., N.C. GEN. STAT. §§ 122C-3(14), -221 (1986) (defining "facility" under the admission statute to include private facilities) with OR. REV. STAT. § 426.220(1) (1987) (applying admission statute to state facilities only) and ALASKA STAT. § 47.30.690 (1984) (leaving "designated treatment facility" undefined and therefore rendering ambiguous whether private facilities are subject to the reach of the statute). Note, *supra* note 378, at 782 n.62.

391. Note, *supra* note 378, at 813.

"neutral factfinder" envisioned by *Parham* because it has a financial interest in admitting the child. That is why Oklahoma, as well as other states, has passed new private law proceedings.

Here is how Oklahoma's new private law proceeding works. The child's parent or legal guardian applies for and consents to the child's admission to a private hospital or other mental health facility for inpatient mental health evaluation or treatment.³⁹² There are three prerequisites for admission. First, of course, the child's parent or legal guardian must apply for admission. Second, the person in charge of the mental health facility (or that person's designee) must deem the child clinically eligible for admission. Third, a licensed mental health professional must also deem the child clinically eligible for admission.³⁹³

A child is eligible for inpatient evaluation when: (1) the child has undergone a prescreening examination, (2) a licensed mental health professional determines, and states in writing, that: (a) there is reasonable cause to believe the child may be a child in need of mental health treatment, and (b) an inpatient evaluation is necessary to properly determine the child's condition and the child's treatment needs, if any.³⁹⁴

A child is eligible for inpatient mental health treatment when: (1) the child has undergone an examination or evaluation (on either an outpatient or inpatient basis), (2) a licensed mental health professional determines (and states in writing) that it is the professional's opinion the child needs inpatient mental health treatment and (a) reasonable efforts have been made to provide the child mental health treatment through less restrictive alternatives, but the alternatives failed to meet the child's treatment needs; or (b) less restrictive alternatives were thoroughly considered, but the child's condition is such that the alternatives are not likely to meet the child's need for mental health treatment.³⁹⁵ The licensed mental health professional's determinations and written statements must be made a part of the child's medical record if the child is admitted for inpatient evaluation or treatment.³⁹⁶ This restriction does not apply to the child's emergency admission to a mental health facility.³⁹⁷ However, if an emergency admission lasts for more than seventy-

392. OKLA. STAT. tit. 43A, § 8-201(A) (Supp. 1990).

393. *Id.* § 8-201(B).

394. *Id.* § 8-201(B)(1).

395. *Id.* § 8-201(B)(2).

396. *Id.* § 8-201(C).

397. *Id.* § 8-201(D).

two hours,³⁹⁸ the regular procedures for inpatient evaluation or treatment apply.³⁹⁹

A child who is fourteen or older may object to inpatient mental health treatment.⁴⁰⁰ The objection may be made by the child or the child's "next friend."⁴⁰¹ The child and the child's parent or legal guardian must be notified, in writing, of the child's right to object, of the substance of the applicable Oklahoma Statutes,⁴⁰² and of the facility's treatment philosophy and methodology.⁴⁰³ They must receive this notice prior to or at the time of the child's admission for inpatient evaluation or treatment.⁴⁰⁴ The notice must be explained to both the child and the child's parent or legal guardian.⁴⁰⁵ The notice form is then signed by the child and parent or guardian and placed in the child's medical records.⁴⁰⁶

If the child notifies the facility that he or she objects to inpatient treatment, facility personnel assist the child in properly filing the objection with the court "without undue delay."⁴⁰⁷ The objection must be in a written form⁴⁰⁸ which complies with the manner of filing designated by the court.⁴⁰⁹

The court has certain duties when an objection is filed. First, it must appoint an attorney to represent the child.⁴¹⁰ Second, the court must set a date for hearing the objection⁴¹¹ to be held within five judicial days.⁴¹² Third, the court must "cause notice of the date, time, place, and purpose of the hearing to be sent to the child, the parents or legal guardian, the person in charge of the mental health facility", and the person

398. *Id.*

399. *Id.* § 8-201(B).

400. *Id.* § 8-202(A).

401. *Id.* The subsection defines "next friend" as:

a relative of the child or other person authorized to act on behalf of the child, including but not limited to an employee of the Department of Human Services, the Department of Mental Health and Substance Abuse Services, a volunteer with a court-appointed special advocate organization, or other person designated by the court.

402. *Id.* § 8-204(A).

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.* § 8-202(A)(1).

408. *Id.* § 8-202(A)(2).

409. *Id.*

410. *Id.* § 8-202(B)(1). The court only appoints an attorney if the child is not already represented by counsel.

411. *Id.* § 8-202(B)(2).

412. *Id.* The hearing date "shall be not more than five (5) days from the date of the filing of the objection, excluding weekends and legal holidays." *Id.*

who filed the objection (if other than the child).⁴¹³ The notice must be delivered at least one day prior to the hearing.⁴¹⁴

At the hearing, the court either sustains or dismisses the objection.⁴¹⁵ The court sustains the objection unless it is shown by clear and convincing evidence, including the report of a licensed mental health professional, that the child is a "child in need of treatment"⁴¹⁶ and: (a) that reasonable efforts have been made to provide the child mental health treatment through less restrictive alternatives, but the alternatives failed to meet the child's treatment needs, or (b) less restrictive alternatives were thoroughly considered, but the child's condition is such that the alternatives are not likely to meet the child's need for mental health treatment.⁴¹⁷ If the court dismisses the objection, the court reviews the case every three months (or more often) until the child is discharged from inpatient treatment.⁴¹⁸ The objection procedure does not prohibit the filing of a writ of habeas corpus.⁴¹⁹

If the child's parent or legal guardian intends to terminate inpatient services, they must give the facility written notice.⁴²⁰ The facility has the option to detain the child for up to three judicial days after receiving notice, in which time it may request the district attorney to file a petition alleging the child is INT.⁴²¹ The request may be made only if the person in charge of the mental health facility (or that person's designee) determines that the child's condition is such that the child should remain in the facility.⁴²² The facility may detain and treat the child pending a hearing on the application.⁴²³

VIII. SUGGESTED CHANGES IN THE LAW

Based on the observations in this article, the following recommendations for change in the law have been divided into two categories. First,

413. *Id.* § 8-202(B)(3).

414. *Id.*

415. *Id.* § 8-202(C)(1).

416. OKLA. STAT. tit. 10, § 1101(5) (Supp. 1990) (defines the term "child in need of treatment").

417. OKLA. STAT. tit. 43A, § 8-202(C)(2)(a) and (b) (Supp. 1990). If the court sustains the objection, the court's order does not "relieve the parent, legal guardian or legal custodian admitting the child to the mental health facility of the liability for the costs of services provided to the child." *Id.* § 8-202(E).

418. *Id.* § 8-202(D).

419. *Id.* § 8-202(F).

420. *Id.* § 8-203(A).

421. *Id.* § 8-203(B).

422. *Id.*

423. *Id.*

there are recommendations for fundamental change in juvenile mental health law. Second, there are recommendations for improvements in existing law. Each is discussed in turn. The only way to address the nation-wide problem of mentally ill children is with national laws. Presently, each state has its own laws concerning mentally ill children. Because the problem is not limited to any one state, Congress should play a leading role in providing minimum standards for the treatment of children alleged to be mentally ill.

These Congressional standards should include federal monitoring of all for-profit mental hospitals⁴²⁴ because for-profit mental hospitals are a special target of health care corporations.⁴²⁵ High profit margins, low investment costs, and the widespread availability of insurance coverage make the mental health care field especially vulnerable to unscrupulous businessmen. Further, the complexity of psychiatric diagnosis and treatment makes cost control efforts by non-professionals in government and the insurance industry difficult.⁴²⁶ Mental hospitals must be monitored to insure that child's best interests are not sacrificed in the corporation's quest for profits.

There also must be fundamental federal reform of private and governmental insurance coverage.⁴²⁷ The current preference for payment of inpatient, as opposed to outpatient community-based intervention, sends the wrong message regarding public policy priorities. Federal law should require insurance coverage to focus first on the least restrictive outpatient treatment possible. Inpatient treatment should be reserved as a last resort, implemented only after all other methods of treatment have been considered and found to be less effective.

Congress should develop a network of effective and accessible community-based services that are available to everyone, based on ability to pay.⁴²⁸ Further, Congress should enact laws requiring pre-admission review of every child's proposed placement in a mental hospital.⁴²⁹ Finally, the federal Legislature should implement a nation-wide public defender system to represent children and indigent parents.

Pending implementation of these fundamental changes in federal law, there is a need for the following improvements in state law. The

424. See Note, *supra* note 378, at 827.

425. *Id.* at 816.

426. *Id.*

427. *Id.* at 775.

428. *Id.*

429. *Id.* (suggesting the enactment of state laws).

1990 Oklahoma Legislature passed multiple acts amending numerous sections of the Juvenile Code. Unfortunately, some of those amendments are contradictory. The Legislature needs to review and harmonize its legislation. States ought to be required to lift the shroud of secrecy from juvenile proceedings. All juvenile records and hearings should be open to public inspection except those closed by court order for good cause. This strikes a more appropriate balance between the public's right to know and the individual's right to privacy. Oklahoma law should require that all court hearings and records be open to the public, unless closed by court order for good cause, and should delete the adjudicatory category of "child in need of treatment" from the Juvenile Code. A child should not be labeled INT as a condition of eligibility for mental health services. If the Legislature declines to discard the INT category, then it should revise the definition of child in need of treatment to define what it means by the terms "near future" and "seriously."⁴³⁰ If the child truly needs inpatient mental health treatment, then the Legislature should provide a procedure in title 43A similar to that used for adults. Oklahoma would also be well-advised to adopt a statewide public defender system to represent children and indigent parents in juvenile proceedings since the poor deserve adequate representation. The Legislature should repeal section 1135.1(c) of title 10, which permits DHS to ignore the court's finding that a child needs inpatient treatment. It is not the role of DHS to act as an appellate court.

The Legislature should also revise Okla. Stat. section 1101(20) of title 10 to identify with whom the independent mental health professional files his affidavit affirming that he has no financial tie to the mental hospital. The mental health professional should attach the affidavit to his report of the child's mental health examination and deliver both to the district attorney, who should then be responsible for filing it with the court. The Legislature should also provide funding for the reports it has authorized the court to order.

Definitions in the Code need to be redefined with more specificity. The Oklahoma State Legislature should define what is meant by the term "certified" when the statute speaks of a mental health examination report recommending inpatient treatment. The report needs to be in the form of a sworn affidavit. The Legislature should define the phrase "employee of the court" as used in section 1107(A)(1) of title 10 when discussing who is authorized to take a child into custody without a court order. As

430. OKLA. STAT. tit. 10, § 1101(5) (Supp. 1990).

currently written, the phrase is broad enough to include secretaries and file clerks. The Legislature probably meant to say "juvenile officer," as that term is used for juvenile bureaus.

The Legislature should specify who has the responsibility of giving the parent or legal guardian notice that the child has been taken into custody and of their right to a show cause hearing. The one taking the child into custody should give the first notice and the district attorney should give the "show cause" notice. Section 1107(E)(2) of title 10 should then be revised to specify who has the burden of proof and what is the standard of proof at the show cause hearing. The burden of proof should be on the district attorney to show cause why the child should remain in protective custody. The standard of proof should be only a preponderance of the evidence standard because a show cause hearing results only in a temporary order and therefore need not meet the more demanding standard of clear and convincing evidence required for an INT adjudicatory hearing.

Other specific recommendations for State legislative action include the following:

- 1.) define the term "imminent danger," as used in title 10, section 1107(F);
- 2.) revise title 10, section 1114 to read "finder of fact" rather than "court" because if a jury trial is held, as authorized by section 1110, the finder of fact is the jury, not the court;
- 3.) revise the procedure for a child objecting to "voluntary" inpatient mental health treatment. The burden should be on the parent to prove the child should be admitted, and the parent's proof should be required prior to admission;
- 4.) narrow the definition of "next friend," contained in title 43A, section 8-202(A), concerning who may file an objection on behalf of the child to inpatient treatment. The degree of consanguinity should be specified. Further, it is not clear what the Legislature means by "other person authorized to act on behalf of the child." Whether the Legislature truly intended to authorize *any* employee of the Department of Human Services, the Department of Mental Health and Substance Abuse Services or any CASA volunteer to act as the child's next friend seems doubtful. This appears to permit too many people to act as the child's "next friend." In fact, some of these organizations may have their own agendas that are not in the child's best interest;
- 5.) clarify the procedure for the child's objection to inpatient "voluntary" mental health treatment. It is now vague and uncertain. For example, title 43A, section 8-202(A)(1), provides that the child should notify the mental health facility of his objection to inpatient treatment.

However, the statute fails to specify the method of notice (oral or written) and to identify the person to whom the notice should be given. Next, the statute imposes the duty on the mental health facility to assist the child in filing the objection with the court "without undue delay."⁴³¹

Unfortunately, the legislation fails to identify who in the mental health facility is responsible for assisting the child (i.e. the person in charge of the facility, a doctor, nurse, etc.), exactly what assistance the facility is to provide (does the facility have to hire a lawyer for the child?), or what it means by "undue delay;"

6.) direct the Director of the Administrative Office of the Courts to promulgate a single form to be used by all district courts. The statute requires objection to "be made in writing . . . in such form and filed in such manner as designated by the court."⁴³² Assuming that the Legislature means the district court when it refers to "the court," this means each district court may devise its own form, leading to different forms for every county and mass confusion;

7.) amend the statute to provide for indexing cases under mental health, with the same fees and costs to be charged and in the same manner as in other cases. Currently, the statute requires the objection to be filed with the court.⁴³³ However, it fails to designate whether a filing fee is to be charged, and if so, what the fee is, who pays the fee, or how the case is to be indexed;

8.) create a statewide public defender system and provide adequate funding. The statute requires the court to appoint an attorney to represent the child if the child is not represented by counsel.⁴³⁴ However, the Legislature provided no source of funding to pay attorneys' fees. As the Oklahoma Supreme Court noted in the recent case of *State v. Lynch*,⁴³⁵ the provision of counsel for litigants and the compensation for counsel is the responsibility of the state, through the Legislature;

9.) amend the statute to allow the court to grant a continuance for good cause shown. Section 8-202(B)(2)⁴³⁶ requires the court to hold the hearing on the objection not more than five judicial days from the filing of the objection. However, that short hearing date may not give the parties sufficient time to prepare for the hearing;

10.) amend the statute to relieve the court of the burden of giving the parties notice and to place it on the party filing the objection. Section 8-202(B)(3) requires that the court cause notice of the hearing to be delivered to certain individuals. The method of notification should be the same as in other civil cases.⁴³⁷ The costs should be paid by the

431. OKLA. STAT. tit. 43A, § 8-202(A)(1) (Supp. 1990).

432. *Id.* § 8-202(A)(2).

433. *Id.*

434. *Id.* § 8-202(B) (1).

435. 796 P.2d 1150 (Okla. 1990).

436. OKLA. STAT. tit. 43A, § 8-202(B)(2).

437. *See* the Oklahoma Pleading Code, OKLA. STAT. tit. 12, §§ 2001-2027 (Supp. 1990).

party filing the objection and proof of service should be required as in other civil cases;⁴³⁸

11.) revise section 8-202(C)(1)⁴³⁹ to specify whether the right to a trial by jury would apply in the context of a child's objection to admission. The statute provides that after the hearing the court shall sustain or dismiss the objection to admission. The statute fails to specify whether any party is entitled to a trial by jury.⁴⁴⁰ Of course, other provisions in the Mental Health⁴⁴¹ and Juvenile⁴⁴² Codes suggest such a right exists, but since Oklahoma recently revised its Constitutional provision for jury trials,⁴⁴³ there is considerable uncertainty on this question;

12.) address the question whether a child's refusal to sign the "voluntary" admission form constitutes an objection. Section 8-204(A)⁴⁴⁴ provides that before a child fourteen or over is admitted for "voluntary" inpatient mental health evaluation or treatment, the substance of the child's right to object shall be explained to the child and be provided in written form. The written form is to be signed by the child and placed in the child's medical records. However, there is no statutory guidance as to the implication of a child's refusal to sign.

13.) review and harmonize the following two statutes: When the Legislature enacted title 43A, sections 8-201 through 8-203, it failed to repeal sections 8-101 through 8-108 as it relates to voluntary admission of minors to private hospitals and institutions. These two sets of statutes are confusing and conflicting. Until this revision is accomplished, courts should follow the classic rules of statutory construction: more recent legislation controls over older legislation and specific legislation controls over general legislation.

Every summons should state on its face that each party has the right to be represented by a lawyer. The summons should further state that if any party wants a lawyer, but cannot afford to hire one, a lawyer will be appointed by the court at no charge.

District attorneys and assistant district attorneys who have juvenile docket responsibility are already required by law to complete education and training courses in juvenile law.⁴⁴⁵ Further, the Oklahoma Supreme

438. *Id.*

439. OKLA. STAT. tit. 43A, § 8-202(C)(1) (Supp. 1990).

440. *Id.* § 5-401(C)(4) (Supp. 1988) (right to jury trial and a jury composed of six persons for involuntary commitment).

441. *See, e.g., id.* §§ 5-212(B) (1) and 5-401(C)(4) (Supp. 1988) (right to demand jury trial in emergency mental health proceedings and in involuntary commitment proceedings).

442. OKLA. STAT. tit. 10, § 1110 (Supp. 1986) (right to demand jury trial for juvenile adjudicatory hearings).

443. *See* OKLA. CONST. art. II, § 19, amended by a vote of the people held Aug. 28, 1990. For full texts of the Constitutional amendment, see *supra*, note 221.

444. OKLA. STAT. tit. 43A, § 8-204(A) (Supp. 1990).

445. OKLA. STAT. tit. 10, § 1211(B) (Supp. 1989).

Court may establish by rule education and training requirements for judges.⁴⁴⁶ It is now time to require all lawyers who represent clients in juvenile court to complete similar education and training courses. Continuing education should be required for all lawyers and judges, for it is only by understanding our system of justice that we may seek to improve it.

CONCLUSION

If a society is judged by the way it treats its children, then Oklahomans should be encouraged by legislative efforts to improve juvenile mental health law. Worthy goals are now in focus. Children should be permitted to remain in their own home whenever possible. Children who need mental health services should receive that care on an outpatient basis whenever possible. The care should be provided to children in or near their home communities.

Inpatient treatment should be considered only as a last resort because it has serious drawbacks. It deprives children of their freedom. It deprives children of their families. It may not be as effective as outpatient treatment, and it is extraordinarily costly to taxpayers.

The proliferation of for-profit mental hospitals must be curbed. These organizations have the potential to prey on the weaknesses of caring parents and to exploit children. Granting older children the right to object to "voluntary" inpatient placement is an important first step, but there is more work to be done. Children should be admitted to mental hospitals only when a neutral and detached factfinder determines that admission is appropriate. Mental hospitals should be closely monitored to make sure children are getting adequate and appropriate treatment. Now is the time for action. This article will fulfill its purposes if federal and state lawmakers use it to improve mental health law for children.

446. *Id.* § 1211(A) (Supp. 1990).