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 (<https://www.okbar.org/members/>) | Resources
 (<https://www.okbar.org/public/>) | About
 (<https://www.okbar.org/about/>)



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Oklahoma Bar Journal



Through the Looking Glass of Child Welfare Services in Oklahoma

By Charlie C. DeWitt

Herbert Hoover once said, “Children are our most valuable resource.”¹ Title 10A of the Children and Juvenile Code is the statutory authority and the Oklahoma Department of Human Services (OKDHS) is the agency that helps protect these “valuable resources.” OKDHS was created in 1936 during the Great Depression. It was first called the Department of Public Welfare, with a nine-member commission and a director to carry out the mission stated in Article XXV of the Oklahoma Constitution: “the relief and care of needy aged persons who are unable to provide for themselves, and other needy persons who, on account of immature age, physical infirmity, disability, or other cause, are unable to provide or care for themselves...”²

Before attending law school, I was a Child Protective Services (CPS) investigator for OKDHS, and during my law school career, an intern with two district attorney’s offices aiding with child welfare matters. One thing I have found over the last few years is that most people do not understand how or why OKDHS does what they do when it comes to children. This article gives readers an explanation of a deprived child case correlated with Title 10A and coupled with OKDHS policy. My hope is that you will see the importance and need for this agency and the juvenile district attorneys who oversee these cases and apply the law to juvenile matters. For purposes of this article, we will not be exploring every facet of Title 10A, as it is a lengthy statute; we will only be diving into some of the portions to provide an explanation of what a deprived case entails.

OVERVIEW OF THE DEPARTMENT OF HUMAN SERVICES

OKDHS is the largest agency in Oklahoma, with offices in all 77 counties and more than 7,000 employees.³ The original constitutional mandate is still reflected by OKDHS as their mission is to help individuals and families in need help themselves lead safer, healthier, more independent and productive lives. The department’s vision is to provide help and offer hope to vulnerable Oklahomans “through stronger practices, involved communities, and a caring and engaged workforce.”⁴

The OKDHS Annual Report states that in 2019, there were 81,249 reports of alleged child abuse and/or neglect, 138,907 children that were alleged victims and 15,809 child victims confirmed as to abuse, neglect or both. At the beginning of the 2019 fiscal year, there were 8,440 children removed from their homes due to abuse and/or neglect (with carryover from 2018). There were 4,416 children who had entered out-of-home care, 4,889 children exiting out-of-home care and 7,927 children that had been removed by the end of the 2019 fiscal year.⁵

LEGAL AUTHORITY COUPLED WITH DHS POLICY

Title 10A of the Children and Juvenile Code is the legal authority that directs OKDHS, the courts and district attorneys on procedural matters concerning child welfare. Section 10A-1-1-102 begins with recognition of duties, rights and interests, or “Legislative Intent.” This section of the law lays out exactly what Oklahoma’s Legislature intended when dealing with deprived children. It discusses the best interests of a child, the rights of children and the interests the state has in protecting its citizens from abuse and neglect. The reality is, children are the most vulnerable individuals in society and the Oklahoma Legislature recognizes that there is an immediate need to protect these children from any abuse and neglect that may



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happen at home. The guiding theme throughout this section of the law is the best interests of the child. Believe it or not, children play a role in what happens when they are removed from the home. This is such an important factor to the Oklahoma Legislature that the statute directs for children in deprived cases to be appointed a lawyer who represents their interests in court.⁶

Another theme throughout section 1-1-102 is permanency. It is the goal of the court and the department to give children permanency.⁷ This means either to return home to their own family or for a parent's parental rights to be terminated and a child to be adopted. In my experience, courts typically terminate rights of parents when a child has been out of the home for a certain amount of time, which is directed by statute, and there is a family who is looking to adopt. This is not always the case, however, when you have children removed from a home for shocking and heinous abuse, the state may go ahead and file a Termination of Parental Rights petition since there is no world in which a child may return home to such an environment where shocking and heinous abuse was present.

To bridge this section of Title 10A to OKDHS policy, we start with the Child Welfare Services (CWS) mission, purpose, scope and legal basis. The OKDHS Child Welfare Services mission is, with the aid and support of community partners, to promote safety, permanency and well-being for Oklahoma families whose children are abused or neglected. The policy then goes into purpose and legislative intent which is similar to §10A-1-1-102, but adds that the CWS purpose is to identify, treat and prevent child abuse and neglect ensuring reasonable efforts are made to maintain and protect the child in the child's own home. When this is not feasible, CWS provides a placement that meets the child's needs.⁸

The next section identifies the scope and states that OKDHS is the designated state agency mandated to protect the child who is alleged or adjudicated deprived. CWS is 1) directed toward child safety, permanency and well-being; 2) to focus on the family, defined as one or more adults and child related by blood or law residing in the same household, as an integral part of the child's well-being; and 3) is provided to assist the parent develop protective capacities and ability to care for the child. This section is particularly important as the department's core principles are designed around this explanation of the scope of OKDHS. It defined what a family is according to the department while also presenting the most important part of an OKDHS case: protective capacities⁹. The department's employees are trained to assess the protective capacities of a parent or person responsible for a child (PRFC) and court cases are hinged on PRFC's demonstrating protective capacities. More will be discussed regarding this subject later, but if a parent is not what the department and the state refer to as "protective," there is no way a child may return home with that parent. In some circumstances, one parent may be protective whereas another is not, but we can cross that bridge when we get to those protective capacities and what exactly that phrase entails.

The next relevant section is §10A-1-1-104 – Jurisdiction to Enforce Oklahoma Children's Code. It states, "The Attorney General, the district attorney of the appropriate district and any other law enforcement official having jurisdiction shall have the authority to bring civil actions against any person, officer or department, board, commission or other entity, to enforce the provisions of the Oklahoma Children's Code, or to enforce any of the laws of this state protecting or applying in any way to a child removed from the custody of the lawful parent of the child by a disposition order of the court."¹⁰ The takeaway from this section is identification of those involved in abuse or neglect cases besides DHS, and the idea of jurisdiction.¹¹ The district attorney represents the interests of the state. There is a vast array of procedures for district attorneys to follow in Title 10A and much of it is self-explanatory. Title 10A provides grounds for filing a Deprived Petition as well as how long a district attorney has to file the petition with the court.

When analyzing the department's relationship with other entities, OKDHS policy 340: 75-3-110(b) states the following:

CPS functions as a component of the multi-faceted system established to protect children from abuse and neglect that includes law enforcement, the court system, other social services agencies and organizations. CPS is a component of the child welfare services continuum that includes preventive and protective services, voluntary family-centered services, foster care and placement services, and adoption services.¹²

All of these agencies must work together to protect children as reflected in the statute and OKDHS policy. When there is a "rift" between these agencies or a lack of communication, it is easy to identify the problems that will develop while conducting the duties of an agent of the court, a law enforcement official or an employee of the department. Procedure must be followed to ensure adequate protection of children since there are so many different agencies and multiple parties involved in deprived cases. Communication is the most important facet of what has been said here. If a CWS worker is not in some form of communication with a district attorney about what is going on with a case, it puts significant strain on that case. When something major happens in a case, a CWS worker should always stop and take a minute to make some attempt to contact the district attorney and the child's attorney letting them know before the court date so adequate preparation and arrangements can be made before everyone is back in front of a judge for a case review. In essence, deprived cases are a collective effort of a group of people who advocate for protecting children.

This section of OKDHS policy continues with the relationship of the department to the court, the state and law enforcement. It begins with the role of CPS as typically the first ones "on the ground" when a case starts and the role of law enforcement since officers are often involved in the investigation period before the court even hears about a new case. The role of CPS is to evaluate reports of child abuse or neglect, assess child safety and the risk of future maltreatment and the need for protective services, and provide and coordinate services. It is the job of a CPS investigator to make the first contact with the family after being assigned a report from the hotline. Policy outlines when appropriate for law enforcement to be contacted and states the role of law enforcement is to investigate reports of child abuse as a crime.¹³ Another way law enforcement and CPS work together is when officer(s) request a joint response by CPS. This occurs when a law enforcement officer has responded to a call or conducted a traffic stop in which a child is present and conditions are determined to be unsafe for that child to remain in the custody of the parent or individual accompanying the child and law enforcement officials place the child in protective custody. CPS is contacted directly by an officer and requested at the scene. CPS then makes a determination upon investigation at the scene as to whether a child should remain with the person who is typically engaged in some type of criminal behavior in the presence of a child, or if there is somewhere safe the child can go with an appropriate adult. Either way, there is now an open investigation as the result of law enforcement requesting the services of the department.

The next section of OKDHS policy is an explanation of the district attorney's role in deprived matters and criminal prosecutions. It is the district attorney's responsibility to determine if the information obtained during the CPS investigation warrants filing a petition alleging the child to be deprived. OKDHS makes recommendations to the district attorney regarding deprived proceedings but not for criminal prosecution. The district

attorney has the responsibility to decide if criminal charges are filed against the alleged perpetrator of child abuse and neglect. The CPS investigation recommendation is limited to the action necessary for child safety.¹⁴

Policy continues with an explanation of the role of the child's attorney. OKDHS policy references this section of the law and states the child's attorney is independent of and not selected by the district attorney, the child's parent, legal guardian or custodian.¹⁵ The child's attorney represents the child's expressed interests unless the child is very young, unable to express an interest, or incapable of judgment and meaningful communication.¹⁶ It is common for the child's attorney to express different interests to the court, contrary to the state and OKDHS. The child's attorney is there to represent the child only. When reading through the intent of the Legislature regarding the best interest of the child being an integral part of this process, the child does have a voice in these proceedings when you have an attorney who is there to represent what that child is saying and what that child would like to see happen in the case. As you can imagine, most children often want to go home to their parents, but sometimes that is not possible.

Per section 1-4-201, the judge in deprived cases may, upon application by the district attorney, issue a court order to place the child in emergency custody when the child is in need of immediate protection due to an imminent safety threat. After a deprived petition is filed, the judge hears the evidence presented during the adjudication hearing and decides if the child is adjudicated a deprived child. When the child is adjudicated deprived, the judge decides if the child is placed in the custody of the PRFC, a relative, OKDHS or another agency, and may order the PRFC and child to participate in a court-ordered individualized service plan.¹⁷

Contrary to popular opinion, judges do not just sign orders for emergency custody. A district attorney and a caseworker and/or a supervisor have to present a judge with some material findings in order to remove a child from the custody of a parent. There are times when judges simply say, "come back when you have a little more" or "you can stop, I've heard enough to sign your order." As a CWS worker, if you go to the district attorney, then a judge for emergency custody, it's best to have all your ducks in a row since Title 10A provides in section 1-4-202v1(B)(1) that a judicial hearing, known as a "show cause hearing," is to be held within two days following the child being taken into emergency custody to determine whether evidence or facts exist that are sufficient to demonstrate to the court there is reason to believe the child is in need of protection due to abuse or neglect.¹⁸

An interesting fact to note here about show cause hearings is that the rules of evidence do not apply. Reasonable suspicion is all that has to be shown at a show cause hearing in order for a judge to keep a child in custody and allow the department to continue investigating. The idea or policy reasons behind this is that children are incredibly vulnerable. The department has a policy to "listen to the voices of children,"¹⁹ so at show cause hearings, there is testimony presented by a CPS investigator that is often what the child has disclosed, which as a matter of evidence is hearsay. This is a clear explanation as to why the rules of evidence do not apply at this stage. A preliminary determination of safety must be made in front of a judge and that requires testimony of all evidence OKDHS has gathered thus far, before submitting the final report of findings to the district attorney's office.

Section 10A-1-2-105 – Investigation of Child Abuse or Neglect-Assessment of Family-Immediate Removal of Child – is fairly lengthy but provides for statutory direction on conducting investigations of abuse and neglect. It states:

Any county office of the Department of Human Services receiving a child abuse or neglect report shall promptly respond to the report by initiating an investigation of the report or an assessment of the family in accordance with priority guidelines established by the Department. The Department may prioritize reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child. The Department shall adopt a priority system pursuant to rules promulgated by the Department.²⁰

This priority system is identified under DHS policy. A Priority 1 investigation requires two initial face-to-face attempts to locate a child the first day the investigation is sent to the proper county and then one attempt a day until that child is found and a safety decision is made. A Priority 2 investigation requires two face-to-face attempts to locate the child upon the due date of case initiation; this due date is usually 3-5 days. The decision of whether cases are Priority 1 or Priority 2 is left up to the hotline. The cases then are sent to the county the children are reportedly in and then assigned to a CPS investigator. That investigator follows protocol as to when contact has to be made with a victim on the case. The case has a due date of initiation and will be posted for the CPS investigator to manage her time efficiently to ensure she does not miss initiation protocol.²¹

Section 10A-1-2-105 then states:

The investigation or assessment shall include a visit to the home of the child, unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith. The visit shall include an interview with and examination of the subject child and may be conducted at any reasonable time and at any place including, but not limited to, the child's school. The Department shall notify the person responsible for the health, safety, and welfare of the child that the child has been interviewed at a school. The investigation or assessment may include an interview with the parents of the child or any other person responsible for the health, safety, or welfare of the child and an interview with and examination of any child in the home.²²

Along with this statutory authorization to interview potential victims of abuse and neglect, OKDHS policy specifically directs face-to-face interviews with the alleged victim(s), other children in the home, PRFCs and the alleged perpetrator. Interviews with other witnesses or "collaterals" can be over the phone. Policy also directs the CWS worker to observe the physical and cultural environment of the home including the home's physical setting, sleeping arrangements for all family members, degree to which the house is safe and healthy for the child, physical appearance of all PRFC(s) and the child, including hygiene, affect, and injuries, and differences in culture of lifestyle which may affect the response of the family to the department.²³

Section 10A-1-2-105 is the relevant legal portion regarding details of an investigation. This portion of the law directs the department on investigation protocol, retrieving behavioral health and medical records, reports of sexual abuse and physical abuse and what to do when the



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department determines the immediate removal of a child is necessary. Section 10A-1-2-105(E) states, "The Department shall make a complete written report of the investigation. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office. Reports of assessment recommendations shall be submitted to appropriate district attorneys." Concerning the investigation report, there is a specific document in which the department directs CWS workers to fill out in the KIDS system when submitting a report to the district attorney.²⁴ This document is called an "Assessment of Child Safety (AOCS)". It provides a wealth of information with regard to the CWS specialist's report including the family demographics and, circumstances and behaviors or conditions surrounding the alleged maltreatment, including intent, explanation(s) given, acknowledgment, attitude, history, or pattern of maltreatment so as to provide for²⁵ what happened, why it happened, has it happened before and, without intervention, is it likely to happen again. Ultimately, the CWS worker provides a brief, detailed statement of why the child is or is not safe to remain in the home and then makes a safety decision, approved by a supervisor that indicates the plan in regard to the child. The AOCS document is available on the okdhs.org website.²⁶ It is public information in order to provide whoever may inquire into how the documentation process of a CPS investigation is conducted. This document is submitted to the district attorney, whether intervention services are requested or not. If intervention services are requested, this document is provided to the court in order for a judge to evaluate the document while managing the case along with the state and OKDHS. If you practice in this area, the AOCS document is a must read.

Once emergency intervention is established, section 10A-1-4-904 provides the next steps. Notification to a parent, legal guardian or custodian must be made. The written notice provides the following or substantially similar language: "Failure to respond to this notice or to appear at the emergency custody hearing means your child will stay or be placed in emergency custody. Your failure to respond or cooperate means you may lose custody of this child or your rights as a parent may be terminated." The statute continues with procedural direction of the show cause hearing. It must take place within two judicial days. The rest of the statute addresses what the court should do at the emergency hearing, whether or not to release the child from emergency custody or to continue the emergency custody. The court also directs the department to address all adult relatives to the child within 30 days.²⁷

Section 10A-1-4-102 provides the evidence which is to be collected. OKDHS has 30 days to submit its report to the district attorney and the statute directs the district attorney to file a petition within three days of receiving a report or to notify the court if the state is not going to file a deprived petition.²⁸

If a district attorney determines further intervention is necessary, according to 10A-1-4-301, the district attorney may file a petition. The statute states,

The petition shall be verified and may be upon information and belief. The petition shall set forth: with particularity, facts which bring the child within the purview of this chapter..., and the relief requested including, but not limited to, or where applicable: an adjudication that the child is deprived, a termination of parental rights, the entry of an order for child support, and a judicial determination of the child's paternity.²⁹

The statute also directs the parties in the case to be served the petition with summons.

After the parties in the case (typically the parents, but legal guardians or custodians may also be parties) are served the petition, an adjudication hearing is put on the docket. At the adjudication hearing, it is the job of the district attorney to prove that the allegations in the deprived petition are supported by a preponderance of the evidence if a parent contests them. The adjudication hearing shall be held no more than 90 calendar days after the filing of the petition. A parent then has the option to stipulate to the allegations in the hearing or to request a bench trial in which the district attorney must call witnesses and prove by a preponderance of the evidence the allegations alleged in the petition are true.³⁰ After the court makes a determination that the allegations in the petition are supported by a preponderance of the evidence, the court declares it is in the child's best interest to be declared deprived and makes the child a ward of the court.³¹

At this point in the case, the department's role has generally shifted from a CPS worker to a permanency worker. Permanency planning services to families include assessing the needs and strengths of the child, involving family members as participants in their own treatment plan, consulting with service providers to evaluate the effectiveness of the services, providing placements for children which will meet their medical, educational, and physical needs, returning children to their own homes as soon as their needs can be met in their parent(s) home and arranging a permanent plan when return to the home is not possible. The permanency worker conducts a family functional assessment (FFA) with the PRFCs. An initial in-depth family assessment begins as soon as possible and is completed within the first 60 calendar days using the earliest date: after the child's removal, the filing of the petition or the signing of the family service agreement. This assessment process identifies and evaluates the family's strengths, resources, protective factors and underlying causes of behavior that create the unsafe conditions.³²

It is the job of the permanency worker, as directed by policy to visit with the children and PRFC(s) on the worker's caseload once a month.³³ The child must be seen alone in which the permanency worker can ask questions freely and the child can reply freely. The permanency worker also prepares the individualized service plan (ISP) that must be provided to the parents and the court and other interested parties.³⁴ Permanency workers attend every court hearing, but if they are not available, either the supervisor of the worker or a fellow team member is sent to provide the court with updates on the case. These workers and the information they provide the state and the court play such an important role in the case throughout the remainder of the child being in OKDHS custody.

Section 1-4-807 of Title 10A provides that a review hearing is to take place no more than six months after the child being removed from the home and no greater than every six months before the child achieves permanency or the court terminates jurisdiction. This section of 10A also provides what is on review during these hearings including the parents' progress in the case and placement for the child(ren).³⁵ Though the statute allows for a period of up to six months, it is common for courts to set review hearings for 30 or 90 days out. This is an effort to allow the parents adequate time to work on services required by the ISP and to help move the achievement of permanency for the child along faster.

A permanency planning worker also facilitates visitation with parent(s) and child(ren). DHS policy requires a minimum of one visit during the first 90 calendar days of the child being removed from the home, and then a frequency of two visits per month between parent and child after that initial period. Separated siblings are to receive one visit per calendar month.³⁶ According to 10A-1-7-105, a child shall have a right to communicate and to visit with his or her family on a regular basis, and to communicate with persons in the community provided the communication or visitation is in the

best interests of the child.³⁷ As a general rule, unspoken in law or policy, the department schedules visitation between PRFC and child(ren) one time a week, an hour at a time. For newborn babies, the visitation is more frequent as the department will set up either twice a week visitation or once a week for two hours at a time.

Section 10A-1-4-904 is the statutory portion that directs termination of parental rights in certain situations. It provides that a court may direct the termination of parental rights if the child has been adjudicated deprived, termination is in the best interest of the child or if a parent voluntarily consents to the termination of their rights. The list for termination of parental rights provided for in 10A-1-4-904 is vast demonstrating the clear intent of Oklahoma lawmakers to protect children as much as possible.

Section 1-4-902 of Title 10A provides for the timeframe in which a district attorney may file a termination petition. It provides a termination petition may be filed in any of the following circumstances:

- Prior to the end of the fifteenth month when a child has been placed in foster care by OKDHS for 15 of the most recent 22 months
- No later than 60 days after a child has been judicially determined to be an abandoned infant
- No later than 60 days after a court has determined that reasonable efforts to reunite are not required due to a felony conviction as addressed in the previous paragraph
- No later than 90 days after the court has ordered the individualized service plan if the parent has made no measurable progress in correcting the conditions which caused the child to be adjudicated deprived.³⁸

The more common time among district attorneys to file a termination petition is around the one-year mark of a deprived case. However, there are circumstances in which a district attorney will file at the 90-day mark, as granted by statute.

WHY WE NEED OKDHS

Children are the most vulnerable individuals in society. Children cannot fight or fend for themselves and they must be cared for, sometimes by those who are not their parents or guardians. OKDHS and the training the agency provides to CWS specialists is because of a legislative mandate to protect the next generation. As a previous CPS worker, I was not immune to the safety threats or imminent danger children face, but I had no insight into life existing the way it does for some of these children until I came into contact with them. The reality is there are children who are being preyed on by predators around them who they often refer to as mom, dad, aunt, uncle, grandma or grandpa. OKDHS is an agency that strives every day, 24 hours a day and seven days a week, to stop abuse and neglect of Oklahoma's children. This is why Oklahoma needs the Department of Human Services. Does OKDHS always get it right? No, but for Oklahoma's largest agency that has functioned since the 1930s, somebody has to be doing something right. I hope you do not read my words and think I believe OKDHS should get a free pass, or OKDHS is perfectly incapable of dropping the ball. That is not my position at all. It is my position that OKDHS needs to follow the law and their own policy without deviations. The department is exactly as it sounds, a service. Oklahoma will continue to see a brighter future because of the sacrifices the agents of the department make every day working long hours and overtime to ensure Oklahoma's children are cared for properly.

ABOUT THE AUTHOR

Charlie DeWitt is a recent graduate of the OCU School of Law and sat for the bar exam in July. She hopes to continue her work with the juvenile court system upon passing the bar.




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