

Oklahoma State Statutes

Title 10. Children

Chapter 1B

Oklahoma Indian Child Welfare Act

Section 40 - Short Title.

Cite as: O.S. §, 10-40

Sections 1 through 10 of this act shall be known and may be cited as the "Oklahoma Indian Child Welfare Act".

Historical Data

Added by Laws 1982, c. 107, § 1, emerg. eff. April 6, 1982.

Section 40.1 - Purpose - Policy of State.

Cite as: O.S. §, 10-40.1

The purpose of the Oklahoma Indian Child Welfare Act is the clarification of state policies and procedures regarding the implementation by the State of Oklahoma of the federal Indian Child Welfare Act, P.L. 95-608. It shall be the policy of the state to recognize that Indian tribes and nations have a valid governmental interest in Indian children regardless of whether or not said children are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated. It shall be the policy of the state to cooperate fully with Indian tribes in Oklahoma in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced.

Historical Data

Added by Laws 1982, c. 107, § 2, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 1, eff. Sept 1, 1994.

Section 40.2 - Definitions.

Cite as: O.S. §, 10-40.2

For the purposes of the Oklahoma Indian Child Welfare Act:

1. "Indian" means a person who is a member of an Indian tribe;
2. "Indian child" means any unmarried or unemancipated person who is under the age of eighteen (18) and is either:
 - a. a member of an Indian tribe, or
 - b. is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
3. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child; and

4. "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Historical Data

Added by Laws 1982, c. 107, § 3, emerg. eff. April 6, 1982.

Section 40.3 - Application of Act - Exemptions - Determination of Indian Status.

Cite as: O.S. §, 10-43

A. The Oklahoma Indian Child Welfare Act, in accordance with the federal Indian Child Welfare Act, applies to all child custody proceedings involving any Indian child except the following:

1. A child custody proceeding arising from a divorce proceeding; or
2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. Except as provided for in subsection A of this section, the Oklahoma Indian Child Welfare Act applies to all state voluntary and involuntary child custody court proceedings involving Indian children, regardless of whether or not the children involved are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated.

C. The court shall seek a determination of the Indian status of the child in accordance with the preceding standard in the following circumstances:

1. The court has been informed by an interested party, an officer of the court, a tribe, an Indian organization or a public or private agency that the child is Indian; or
2. The child who is the subject of the proceeding gives the court reason to believe he is an Indian child; or
3. The court has reason to believe the residence or domicile of the child is a predominantly Indian community.

D. The court shall seek verification of the Indian status of the child from the Indian tribe or the Bureau of Indian Affairs. A determination of membership by an Indian tribe shall be conclusive. A determination of membership by the Bureau of Indian Affairs shall be conclusive in the absence of a contrary determination by the Indian tribe.

E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of Section 40.4 of this title.

Historical Data

Added by Laws 1982, c. 107, § 4, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 2, eff. Sept 1, 1994.

Section 40.4 - Involuntary Indian Child Custody Proceedings - Notice.

Cite as: O.S. §, 10-40.4

In all Indian child custody proceedings of the Oklahoma Indian Child Welfare Act, including voluntary court proceedings and review hearings, the court shall ensure that the district attorney or other person initiating the proceeding shall send notice to the parents or to the Indian custodians, if any, and to the tribe that is or may be the tribe of the Indian child, and to the appropriate Bureau of Indian Affairs area office, by registered mail return receipt requested. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;
2. A copy of the petition by which the proceeding was initiated;
3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:
 - a. to intervene in the proceeding,
 - b. to petition the court to transfer the proceeding to the tribal court of the Indian child, and
 - c. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;
4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians;
5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and
6. A statement that tribal officials should keep confidential the information contained in the notice.

Historical Data

Added by Laws 1982, c. 107, § 5, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 3, eff. Sept 1, 1994.

Section 40.5 - Emergency Removal of Indian Child from Parent or Custodian - Order.

Cite as: O.S. §, 10-40.5

A. When a court order authorizes the emergency removal of an Indian child from the parent or Indian custodian of such child in accordance with 25 U.S.C. § 1922, the order shall be accompanied by an affidavit containing the following information:

1. The names, tribal affiliations, and addresses of the Indian child, the parents of the Indian child and Indian custodians, if any;
2. A specific and detailed account of the circumstances that lead the agency responsible for the removal of the child to take that action; and
3. A statement of the specific actions that have been taken to assist the parents or Indian custodians so that the child may safely be returned to their custody.

B. No pre-adjudicatory custody order shall remain in force or in effect for more than thirty (30) days without a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. However, the court may, for good and sufficient cause shown, extend the effective period of such order for an additional period of sixty (60) days.

Historical Data

Added by Laws 1982, c. 107, § 6, emerg. eff. April 6, 1982.

Section 40.6 - Placement Preference.

Cite as: O.S. §, 10-40.6

The placement preferences specified in 25 U.S.C. § 1915, shall apply to all preadjudicatory placements, as well as preadoptive, adoptive and foster care placements. In all placements of an Indian child by the Oklahoma Department of Human Services (DHS), or by any person or other placement agency, DHS, the person or placement agency shall utilize to the maximum extent possible the services of the Indian tribe of the child in securing placement consistent with the provisions of the Oklahoma Indian Child Welfare Act. This requirement shall include cases where a consenting parent evidences a desire for anonymity in the consent document executed pursuant to Section 60.5 of this title. If a request for anonymity is included in a parental consent document, the court shall give weight to such desire in applying the preferences only after notice is given to the child's tribe and the tribe is afforded twenty (20) days to intervene and request a hearing on available tribal placement resources which may protect parental confidentiality, provided that notice of such hearing shall be given to the consenting parent.

Historical Data

Added by Laws 1982, c. 107, § 7, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 4, eff. Sept 1, 1994.

Section 40.7 - Agreements with Indian Tribes for Care and Custody of Indian Children.

Cite as: O.S. §, 10-40.7

The Director of the Department of Human Services and the Executive Director of the Office of Juvenile Affairs are authorized to enter into agreements with Indian tribes in Oklahoma regarding care and custody of Indian children as authorized by the Federal Indian Child Welfare Act, 25 U.S.C. § 1919.

Historical Data

Added by Laws 1982, c. 107, § 8, emerg. eff. April 6, 1982.; Amended by Laws 1997, c. 293, § 1, eff. July 01, 1997.

Section 40.8 Payment of Foster Care Expense under Certain Circumstances.

Cite as: O.S. §, 10-40.8

A. In the event the Department of Human Services has legal custody of an Indian child, and that child is placed with a tribally licensed or approved foster home, the state shall pay the costs of foster care in the same manner and to the same extent the state pays the costs of foster care to state-licensed or state-approved foster homes, provided that the tribe shall have entered into an agreement with the state pursuant to Section 8 herein, which shall require tribal cooperation with state plans required by federal funding laws.

B. The state shall pay the costs of foster care of a child placed with a tribally licensed or approved foster home where the placement is made by a tribe having jurisdiction of the proceeding, provided that the tribe shall have entered into an agreement with the state pursuant to Section 8 herein, which shall require tribal cooperation with state plans required by federal funding laws.

Historical Data

Added by Laws 1982, c. 107, § 9, emerg. eff. April 6, 1982.

Section 40.9 - Records.

Cite as: O.S. §, 10-40.9

The Department of Human Services shall establish a single location where all records of every involuntary foster care, pre-adoptive placement and adoptive placement by the courts of any Indian child in the custody of the Department of Human Services or under Department of Human Services supervision will be available within seven (7) days of a request by the tribe of the Indian child or by the Secretary of Interior. The records shall include, but not be limited to, all reports of the state caseworker, including a summary of the efforts to rehabilitate the parents of the Indian child, a list of the names and addresses of families and tribally approved homes contacted regarding placement, and a statement of reason for the final placement decision.

Historical Data

Added by Laws 1982, c. 107, § 10, emerg. eff. April 6, 1982.