

No. 26-_____

IN THE
Supreme Court of the United States

RACHEL BETH ODOM,
Petitioner,
v.
STATE OF OKLAHOMA,
Respondent.

**On Petition for a Writ of Certiorari to the
Court of Civil Appeals of
Oklahoma, Division III**

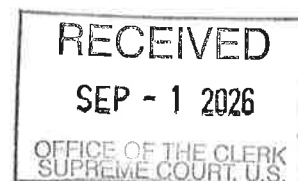
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner is the mother of her now eleven-year-old daughter, E.O.D. The State of Oklahoma took emergency custody of E.O.D. on February 14, 2025, and adjudicated her a deprived child on June 4, 2025. Throughout those proceedings, the same district attorney's office that filed the deprived-child petition was simultaneously prosecuting Petitioner for murder arising from the same events. She has not been convicted. The questions presented are as follows:

1. Whether a State may compel a parent to take the stand in a child-deprivation proceeding, draw an adverse inference from her invocation of the Fifth Amendment privilege against self-incrimination, and grant her immunity only as to matters serving its own litigating position while simultaneously prosecuting her for the identical conduct in a parallel criminal proceeding and withholding immunity as to the allegations on which the case turns.

2. Whether a later adversarial hearing cures the State's total, conceded failure to give a parent notice of, and any opportunity to be heard at, the emergency hearing at which the State took custody of her child.

PARTIES TO THE PROCEEDING

Petitioner is Rachel Beth Odom, the natural mother of E.O.D., a minor child. She was the respondent mother in the trial court and the appellant below. Respondent is the State of Oklahoma, which filed the deprived-child petition and appeared as appellee below. E.O.D. appeared below through her own attorney. No party is a corporation, so no disclosure statement is required under this Court's Rule 29.6.

RELATED PROCEEDINGS

In the Matter of E.O.D., Alleged Deprived Child, No. JD-2025-45, District Court of Tulsa County, Oklahoma (Hon. Kevin Gray) (adjudication order entered June 4, 2025; motion to terminate parental rights filed January 21, 2026, pending).

In re E.O.D.; Rachel Beth Odom v. State of Oklahoma, No. 123,076, Oklahoma Court of Civil Appeals, Division III (opinion affirming entered March 9, 2026).

In re E.O.D.; Rachel Beth Odom v. State of Oklahoma, No. 123,076, Supreme Court of Oklahoma (certiorari denied June 1, 2026) (Darby, J., dissenting).

No. 123,788, Supreme Court of Oklahoma (original proceeding concerning the same child).

State v. Rachel Beth Odom, No. CF-2025-676, District Court of Tulsa County, Oklahoma (pending).

In re Guardianship of E.O.D., No. PG-2025-38, District Court of Cleveland County, Oklahoma.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Rachel Beth Odom respectfully petitions this Court for a writ of certiorari to review the judgment of the Oklahoma Court of Civil Appeals, Division III.

OPINIONS BELOW

The opinion of the Oklahoma Court of Civil Appeals, Division III (App. 16a–26a) is unpublished and bears the designation “NOT FOR OFFICIAL PUBLICATION.” The order of the Supreme Court of Oklahoma denying certiorari, noting the dissent of Justice Darby (App. 27a–28a), is unreported. The Adjudication Order of the District Court of Tulsa County (App. 29a–39a) is unreported.

JURISDICTION

The Court of Civil Appeals entered its judgment on March 9, 2026. The Supreme Court of Oklahoma denied Petitioner’s timely petition for certiorari on June 1, 2026. Pursuant to Supreme Court Rules 13.1 and 13.3, the time to petition this Court runs from that denial and expires on August 30, 2026, a Sunday. Pursuant to Rule 30.1, the petition is timely if filed on or before Monday, August 31, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a). The finality of the judgment is addressed in Part IV of the Reasons for Granting the Petition, *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part: “No person . . . shall be compelled in any criminal case to be a witness against himself . . .” U.S. Const. amend. V.

Section 1 of the Fourteenth Amendment provides in relevant part: “*No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .*” U.S. Const. amend. XIV, § 1.

The Indian Child Welfare Act, 25 U.S.C. § 1912(e), and the pertinent provisions of the Oklahoma Children’s Code, 10A O.S. §§ 1-4-201, 1-4-202, 1-4-203, 1-4-508, and 1-4-603, are reproduced at App. 1a–15a.

STATEMENT OF THE CASE

Six lines of transcript frame both questions presented. On May 16, 2025, in the District Court of Tulsa County, the State of Oklahoma, acting by and through the Tulsa County District Attorney’s Office, called Petitioner, Rachel Odom, as a witness in its case-in-chief at the trial of its own petition to adjudicate her then nine-year-old daughter a deprived child and asked her, under oath, whether she had shot and killed the child’s father. App. 86a, 43:22–25; 87a, 44:1–25; 88a, 45:1–10. The office asking the question was the same office prosecuting her for that killing. In response to the prosecutor’s question, Petitioner asserted her privilege against self-incrimination. The prosecutor turned to the bench:

MS. JANTZ: Your Honor, at this point, that would incriminate her and I’m asking this Court to make an adverse inference, as you are allowed to do as this is a civil proceeding.

THE COURT: It is, and I can, and I will.

The court made good on that warning. It had already overruled her invocation of the privilege in response to the State’s opening question—“Do you have any children?”—stating, “I disagree. But she’s provided

you the answer.” App. 87a, 44:24–25. It then announced a blanket, ongoing adverse inference as to every question Ms. Odom would decline to answer, overruled her objection, granted a continuing exception, App. 95a, 52:18–25; App. 96a, 53:1–9, and extended the same inference to questioning by the child’s own attorney, App. 97a, 54:1–25; App. 98a, 55:1–25; App. 99a, 56:1–25; App. 100a, 57:1–25; App. 101a, 58:1–25; App. 102a, 59:1–25; App. 103a, 60:1–20. On this record, the court adjudicated E.O.D. deprived as to her mother. App. 132a, 448:13–20.

The events culminating in the adjudication hearing span barely eight days.

A. The State takes custody.

On February 13, 2025, Ryan Davis, the natural father of E.O.D., died of a gunshot wound in Petitioner’s Tulsa home. Petitioner and the child were present. That evening, Petitioner took the child to her father, Paul Brashier Odom III, the child’s maternal grandfather.

The next morning, at 9:45 A.M., Mr. Odom III obtained an emergency guardianship of the child from the District Court of Cleveland County, No. PG-2025-38. More than four hours later, at approximately 1:45 P.M., the State applied to the District Court of Tulsa County for an emergency custody order. The application was granted. The Department of Human Services removed the child from her grandfather’s home and placed her with her paternal uncle and aunt.

That same day, Petitioner was arrested on suspicion of murder and held at the David L. Moss Criminal Justice Center. She was charged in Tulsa County No. CF-2025-676. The prosecution is brought by the same district attorney’s office that brought the deprived-

child petition. Petitioner has not been convicted. While E.O.D. is an enrolled member of the Chickasaw Nation, and the Indian Child Welfare Act applies to the deprivation proceeding, the questions presented do not seek any construction of that Act. Rather, the questions presented arise under the Fifth and Fourteenth Amendments and would be presented identically in a case to which the Act did not apply.

B. The emergency custody hearing is held without her.

On February 21, 2025, the district court convened the emergency custody hearing. Petitioner received no notice of the hearing and was not present. Her counsel appeared and expressly declined to waive her right to a hearing. The stated reason she was not produced was a frozen gate at the jail; she was detained within sight of the courthouse. App. 65a, 59:2–25; App. 66a, 60:1–12; App. 67a, 61:1–13. The court extended the emergency custody order. The order was filed February 25, 2025; a nunc pro tunc order followed on March 26, 2025.

The State filed its deprived-child petition on February 26, 2025, and an amended petition on March 14, 2025.

C. The adjudication trial.

The nonjury adjudication trial was held on May 16 and 22, 2025. On the morning of trial, Petitioner's counsel moved to prevent the State from calling her as a witness. The court framed the motion:

THE COURT: The last one I have is Motion to Prevent Natural Mother's Testimony. Mr. Allen, you filed that one today. Essentially, it seems to me that you are saying that your client is going to take the stand and she's going to, essentially on advice of counsel,

plead the Fifth to pretty much every question. Is that an accurate summation of your posture?

MR. ALLEN: Yes, Your Honor.

App. 75a, 26:1–8. The court denied the motion:

THE COURT: I'm not going to provide you a blanket excusing her from testimony. I'm not going to do that. If a party wants to call her and they want to start asking her questions, they can start asking her questions. If she needs to plead the Fifth because she believes, on advice of counsel, it's something that gets us too close to that, then fine. I certainly can't force her to testify.

App. 82a, 33:4–13. "I'll deny your request for a blanket she's not going to testify. I'll note your exception." App. 84a, 35:10–11. The court invited the State to call her, App. 84a, 35:19–22, and the State did: "MS. JANTZ: State calls Rachel Odom." App. 86a, 43:9–23. She was sworn, and the examination proceeded as set out above—the overruled assertion, the question whether she shot and killed the child's father, the request for an adverse inference, and the court's answer: "It is, and I can, and I will." The examination continued in that pattern—question, invocation, inference—under the court's previous ruling. App. 95a, 52:18–25; App. 96a, 53:1–9.

Later in the same examination, the State offered Petitioner immunity of a particular scope:

MR. GRAYLESS: Judge, the State would grant Ms. Odom immunity for conduct that she exhibits in court today, for her demeanor

and her affect, so that we can ask questions related to her competency as a witness.

App. 107a, 64:22–25; App. 108a, 65:1–4. The court explained the consequence of the grant: “I think the difference here though with the grant of immunity is that then I can direct her to answer the question.” App. 11a, 68:9–22. And it did: “. . . they’ve offered you immunity. I’ve granted you immunity for the limited purpose that Mr. Grayless outlined there, so I’ll direct you to answer the question.” Petitioner responded: “I assert my rights against self-incrimination.” App. 113a, 70:11–24. Her counsel stated the objection that underpins the first question presented to this Court:

MR. ALLEN: [Y]ou’ve already indicated that you will be taking a negative inference from her previous assertion of her Fifth Amendment rights pursuant to that question, and, therefore, the I guess offer of immunity that has no value to my client.

App. 112a, 69:19–25.

D. The evidence and the findings.

The State’s evidence of deprivation was thin, and the District Court of Tulsa County said so. On cross-examination, the DHS child welfare specialist, Renee Barber, conceded that nothing in the child’s forensic interview indicated exposure to criminal activity (“Q. So the fact of the matter is, it doesn’t say anything about criminal activity, does it? A. Correct.”); that nothing suggested exposure to domestic violence (“A. No, not during the forensic interview.”); that the child had made no disclosures of abuse or neglect; and that “Q. Would you agree that Elizabeth is a thriving nine-year-old child? A. Yes.” App. 124a, 348:15–25; App. 125a, 349:1–25; App. 126a, 350:1–19.

The court itself found: “And here I will acknowledge here there is zero evidence the child was abused. There’s no information at all in front of me that that child has suffered physical, sexual, or emotional abuse.” App. 129a, 445:10–14; *accord* App. 130a, 446:2–4. It nonetheless found each of the three state-law statutory grounds by a preponderance of the evidence, App. 128a, 444:23–25; App. 129a, 445:1–8; App. 130a, 446:25; App. 131a, 447:1–2, 14–19, and adjudicated the child deprived as to her mother, App. 132a, 448:13–20. The Adjudication Order was entered June 4, 2025.

Five months after trial, the same judge observed from the bench:

[T]he question raises does the child actually need to be in State custody. Why is the child in State custody? And in this particular situation, I think arguably the really only good answer anybody seems to have is because that’s the way we do things. And I’m struggling to understand, have somebody explain to me, “well, because that’s the way we do it,” when in this particular situation, the child does not suffer for lack of resources, does not suffer for a lack of a safe place to be, does not suffer for a lack of schooling, education, health care, all of those kinds of things.

App. 137a, 16:1–12.

E. The appellate proceedings.

The Court of Civil Appeals affirmed the District Court of Tulsa’ decision on March 9, 2026, in an unpublished opinion. The State filed no answer brief. App. 26a, n.3.

On the notice question, the court conceded that “[t]here seems to be no dispute in the record that notice of the emergency custody hearing was not provided to Appellant,” App. 21a, ¶ 12, and that she “had a statutory right to notice.” App. 22a, ¶ 14. It held that the defect did not “render the entirety of the proceedings thereafter . . . infirm” because Petitioner participated in later hearings. App. 22a, ¶ 14 (quoting *Cate v. Archon Oil Co.*, 1985 OK 15, 695 P.3d 1352 for the proposition that due process requires participation “before one’s rights are irretrievably altered” and holding that the rights altered on February 21 were not yet irretrievable).

On the Fifth Amendment question, the court relied exclusively on *Baxter v. Palmigiano*, 425 U.S. 308 (1976), and *Matter of C.C.*, 1995 OK CIV APP 127, 907 P.2d 241. App. 23a, ¶ 18; App. 24a, ¶¶ 19–23; App. 25a, ¶ 23. It reasoned that the privilege against being called as a witness “is confined to an accused in a criminal matter,” and that adverse inferences are permissible because a deprived proceeding “is civil in nature.” It did not address this Court’s decisions in *Garrity v. New Jersey*, 385 U.S. 493 (1967), *Spevack v. Klein*, 385 U.S. 511 (1967), *Lefkowitz v. Turley*, 414 U.S. 70 (1973), *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977) or *Malloy v. Hogan*, 378 U.S. 1 (1964), each of which was briefed to it.

The Supreme Court of Oklahoma denied certiorari on June 1, 2026, without opinion. Justice Darby dissented. App. 27a.

On January 21, 2026, a motion to terminate Petitioner’s parental rights was filed in the district court. It is pending.

REASONS FOR GRANTING THE PETITION

This petition asks what the Constitution requires when the State proceeds against a parent on two tracks at once—a criminal prosecution against the parent and a civil proceeding to remove her child—and uses each proceeding to reinforce the other. Here, two constitutional errors arose at the front end of a family-separation proceeding: the State extended emergency custody without notice to the parent, then used the parent’s protected silence as evidence while prosecuting her for the same alleged conduct. Review is warranted because the decision below treats both errors as ordinary incidents of civil child-welfare litigation, despite this Court’s cases that require meaningful notice before deprivation and forbid the State from attaching a substantial penalty to the exercise of the Fifth Amendment privilege.

The first question presented is whether the State, having chosen to prosecute Petitioner for the death of her child’s father, can call her to the stand in its deprived-child case, ask her whether she committed the murder, and take her silence as evidence against her while simultaneously granting her immunity only where her testimony would serve the State’s own purposes. The Court of Civil Appeals of the State of Oklahoma answered this question in the affirmative, relying on the strength of *Baxter v. Palmigiano*, 425 U.S. 308 (1976) and the observation that the proceeding “is civil in nature.” App. 23a, ¶ 18. In reaching this conclusion, however, the court wholly ignores this Court’s line of decisions holding that a State may not attach a substantial penalty to the exercise of the Fifth Amendment privilege against self-incrimination, despite the same being raised to it. *See Garrity v. New Jersey*, 385 U.S. 493 (1967), *Spevack v. Klein*, 385 U.S.

511 (1967), *Lefkowitz v. Turley*, 414 U.S. 70 (1973), *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977), and *Malloy v. Hogan*, 378 U.S. 1 (1964).

The second question is whether the complete, conceded failure to give a parent notice of, or any opportunity to be heard at, the hearing at which the State takes custody of her child is cured because she was heard at later hearings, a decision that cannot be reconciled with this Court's holding in *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Together, the lower court's answers to these questions ultimately dictate the "process" Oklahoma affords a parent suspected of a crime: custody of her child may be taken and extended at a hearing of which she receives no notice, and the ensuing civil case may then be proven, in meaningful part, out of her constitutionally protected silence, all while the criminal case in which that silence is her shield awaits trial. This ruling was entered in a case in which the trial court acknowledged "zero evidence the child was abused," the State's own witness agreed the child was "thriving," and the trial judge later asked aloud why the child was in State custody at all. The questions presented are recurring, the record is unusually clean, and no court in this case has yet answered either one with the controlling authorities in view.

I. The decision below cannot be reconciled with this Court's penalty cases.

The court below held that the Fifth Amendment tolerated all of this because a deprived-child proceeding "is civil in nature." App. 23a, ¶ 18; App. 24a, ¶¶ 19–23; App. 25a, ¶ 23. This Court's cases, however, ask not what a proceeding is called but what price a state has attached to silence.

A. The penalty cases forbid what happened here.

The privilege against self-incrimination applies to the States through the Fourteenth Amendment, which “secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement—the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty . . . *for such silence.*” *Malloy v. Hogan*, 378 U.S. 1, 8 (1964) (emphasis added). The privilege “not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him *in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.*” *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973) (emphasis added). Applied here, Petitioner’s invocations were fully privileged even though the proceeding in which the State questioned her was denominated as civil. The question is not how the proceeding is categorized but rather what consequences the State could attach to the questions posed to an individual in such a proceeding.

This Court’s answer has been consistent for six decades: no consequences that make the privilege costly. For example, this Court in *Griffin v. California* held that comment on a defendant’s refusal to testify is “a penalty imposed by courts for exercising a constitutional privilege,” which “cuts down on the privilege by making its assertion costly.” 380 U.S. 609, 614 (1965). Similarly, in *Garrity v. New Jersey*, this Court held that statements extracted from police officers under threat of discharge were coerced: “The option to lose their means of livelihood or to pay the penalty of

self-incrimination is the antithesis of free choice to speak out or to remain silent.” 385 U.S. 493, 497 (1967). In *Spevack v. Klein*, decided the same day as *Garrity*, this Court held that an attorney could not be disbarred for asserting the privilege in a disciplinary proceeding, noting that the privilege’s protections “should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.” 385 U.S. 511, 514 (1967) (plurality opinion). Moreover, in *Turley*, this Court held that New York could not cancel the public contracts of architects, and disqualify them from future public work, because they declined to waive immunity before a grand jury: if the State wants testimony notwithstanding the privilege, it must confer immunity; it may not simply attach a price to silence. 414 U.S. at 84–85. Finally, in *Lefkowitz v. Cunningham*, this Court struck down the divestiture of a political party officer who refused to waive immunity, restating the principle that unites the line: “a State may not impose substantial penalties because a witness elects to exercise his Fifth Amendment right not to give incriminating testimony against himself.” 431 U.S. 801, 805 (1977) (emphasis added).

Under these cases the State’s lawful options are two, and only two. It may respect the witness’s silence and prove its case with other evidence. Or it may displace the privilege with a grant of immunity coextensive with it and then compel the testimony. *Turley*, 414 U.S. at 85; *Cunningham*, 431 U.S. at 805. What it may not do is what Oklahoma did here: call the witness in its own case, decline to immunize her as to the allegations that mattered, ask her under oath whether she committed the murder for which it was prosecuting her, and convert each invocation of the privilege into evidence supporting the loss of her child.

The court below answered all of this with the observation that a deprived-child proceeding “is civil in nature.” But if the civil label were dispositive, the penalty cases would have come out the other way: indeed, the disbarment proceeding in *Spevack*, the contract disqualification in *Turley*, and the divestiture in *Cunningham* were all civil. The label identifies the forum; it does not measure the penalty. These cases ask what the invocation of the privilege cost the person who invoked it, and, here, it cost Petitioner an adverse finding on every question the State chose to ask—up to and including whether she killed the father of her child.

Cunningham is the closest of the penalty cases, and it is on all fours in the respect that matters. There, as here, the sanction followed directly upon the invocation of the privilege, and no grant of immunity accompanied the demand for testimony. The Court did not ask whether the proceeding was labeled civil; the divestiture proceeding plainly was, and the sanctions were economic and political rather than criminal. It asked whether the State had imposed a substantial price on silence without purchasing the testimony with immunity. It had, and the sanction fell. Here the price of silence was an adverse inference on every question in a case that ended in the adjudication of Petitioner’s daughter as deprived—an adjudication the State has now made the predicate of a motion to terminate her parental rights. If the loss of a party office is a substantial penalty within the meaning of the Fifth Amendment, then the loss of a child unquestionably is.

B. Baxter does not reach this case.

The court below rested its Fifth Amendment holding on a single decision of this Court: *Baxter v. Palmigiano*, 425 U.S. 308 (1976). In *Baxter*, this Court held that, in a prison disciplinary proceeding, an inmate's silence could be given evidentiary weight as one factor among others—where the silence was met by independent probative evidence, where no sanction followed automatically from the invocation itself, and where the State's interests in prison administration were at their height. This Court described “the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.” *Id.* at 318. *Baxter* took care to distinguish, not disturb, the penalty cases: the inmate's silence carried limited evidentiary weight, and discipline could not rest on the silence alone. The decision is a narrow accommodation to the realities of prison administration, not a general license to tax the privilege whenever the caption of the proceeding is civil.

Three features of the present matter place it outside *Baxter* and inside the penalty line. First, the interest at stake. *Baxter* involved prison discipline—sanctions imposed on convicted men already lawfully in state custody in a setting where the State's administrative interests are at their apex and the inmate's residuum of liberty at its narrowest. In stark contrast, the case before this Court involves “the interest of parents in the care, custody, and control of their children—perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Parents are constitutionally entitled to a hearing on their fitness before

their children are taken from them, *Stanley v. Illinois*, 405 U.S. 645 (1972), and this Court has policed with particular care the procedures by which a State moves against the parent-child relationship because the private interest at stake is “commanding” and the risk of error borne by the parent is severe, *Santosky v. Kramer*, 455 U.S. 745 (1982). The penalty cases measured the sanction against the right: a livelihood in *Garrity* and *Spevack*, public contracts in *Turley*, and a party office in *Cunningham*. Each was held too high a price for silence. Under *Spevack*, a State may not take a lawyer’s license as the price of his silence. But under the decision below, it may take a mother’s child. Nothing in *Baxter*—a case about prison discipline—licenses that inversion of constitutional magnitudes.

Second, the structure of the penalty. *Baxter* permitted a measured evidentiary inference from a party’s failure to respond to probative evidence already arrayed against him. Here the inference was not measured and did not respond to anything. The State called Petitioner in its case-in-chief, asked her whether she shot and killed the child’s father, and requested the inference the moment Petitioner invoked the privilege. Even before hearing the questions asked, the court announced in advance a blanket, ongoing inference as to every question and extended the same to questioning by the child’s attorney. The court did not weigh any particular silence against any particular evidence; it adopted, prospectively and wholesale, a standing rule that silence would count against her. That is not *Baxter*’s inference. It is *Griffin*’s penalty—an assertion of the privilege made “costly” as such—operating on every answer the parent declined to give. Nor was the inference cumulative of a solid independent record. The State’s own child welfare specialist conceded that the forensic interview

reflected no exposure to criminal activity or domestic violence, no disclosures of abuse or neglect, and a “thriving” child, and the court acknowledged “zero evidence the child was abused.” On such a record, the inference was not a makeweight; it was load-bearing.

Third, the identity of the examiner. *Baxter* addressed an inmate who declined to respond to a disciplinary charge. Petitioner did not merely decline to rebut; the State called her to the stand as a witness in its own case-in-chief, over a motion invoking exactly this Court’s penalty decisions, and put to her the ultimate question of the pending prosecution: “On February 13th, did you shoot and kill her father?” The sovereign demanding that answer was the same sovereign prosecuting her for that homicide, through the same district attorney’s office, while she sat in its jail awaiting trial. Whatever room *Baxter* leaves for evidentiary inferences between private civil litigants, the compulsion the penalty cases forbid is at its most direct when the State that will conduct the criminal trial is itself the party summoning the witness and penalizing her refusal. A rule permitting that practice gives the prosecuting sovereign, in every case where a parent is criminally charged, a guaranteed evidentiary windfall in the parallel civil case: either the parent testifies about the charged conduct—and the State obtains her account for use in the prosecution—or she invokes the privilege, and the State obtains an adverse finding on every single allegation. The Fifth Amendment does not tolerate a procedure whose whole design ensures that the privilege costs its holder the case.

C. The lower courts are uniform because none has asked the question.

If the loss of one's child to the State is not a "penalty" for invoking the privilege, then nothing is. The Vermont Supreme Court stated the premise plainly: "There is no question that deprivation of custody of a child is a sanction for purposes of the Fifth Amendment." *In re M.C.P.*, 153 Vt. 275, 571 A.2d 627 (1989). How, then, can the Constitution shield an attorney from the loss of his license for asserting the privilege, *Spevack*, and an architect from the loss of his public contracts, *Turley*, yet leave a mother who asserts it exposed to the loss of her daughter?

The courts that permit the inference have not answered that question because they have not asked it. Petitioner accordingly claims no division among the federal courts of appeals or the state courts of last resort; there is none to claim. State courts have "overwhelmingly" permitted adverse inferences against parents who invoke the privilege in child welfare proceedings. *In re Dependency of A.M.F.*, 526 P.3d 32 (Wash. 2023) (en banc); see *In re C.O.*, 171 N.H. 748, 203 A.3d 870 (2019); *Adoption of Cecily*, 83 Mass. App. Ct. 719 (2013) (permitting the inference "even though criminal charges are pending"). But the uniformity of outcome is one produced by repetition, not analysis. Each case rests on *Baxter's* description of "the prevailing rule" in civil actions, or simply on the civil label of the proceeding—precisely the reasoning of the court below—and each wholly avoids the question the penalty cases make dispositive. *A.M.F.* is illustrative: it catalogued the consensus it joined, and the catalogue is one of courts following one another to *Baxter*, not of courts answering the penalty question and reaching differing conclusions.

Even more, the doctrine has drifted as it has spread. What *Baxter* permitted as a limited evidentiary inference has, in some formulations, become something considerably stronger. West Virginia instructs that a parent's silence may be treated as "affirmative evidence of that individual's culpability." *W. Va. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E.2d 865, 874 (1996). That is not an adverse inference at the margin; it is the proposition *Griffin* condemned—that the exercise of the privilege may itself be made proof of guilt. The record here shows where the drift ends: a court announcing, in advance and wholesale, that every future invocation will count against the parent, at the request of the office prosecuting her.

The contrary authority exists, though it has not matured into a square conflict nor likely will. A New Jersey intermediate appellate court has refused to sanction the practice where the parent faces parallel criminal exposure, *N.J. Div. of Child Protection & Permanency v. S.K.*, 456 N.J. Super. 245 (App. Div. 2018), and Vermont has recognized the premise, *M.C.P.*, *supra*. But courts that treat *Baxter* as the end of the analysis have no occasion to divide over a question they do not consider.

Uniformity produced by a question never asked is a reason to grant review, not to deny it. Where the conflict criterion fails, it fails here only because the lower courts have uniformly stopped at *Baxter's* threshold; percolation is complete in the only sense that matters, because no further development can be expected from courts that regard the issue as closed. Only this Court can say whether *Baxter* or the penalty cases govern when the sanction attached to silence is the loss of a child. The decision below—which cited none of the penalty cases although all were briefed—

is the natural terminus of that unexamined consensus, and an appropriate occasion for examining it.

D. No court has addressed the State's selective grant of immunity.

This case adds a feature that, so far as Petitioner has found, no court has addressed: the State demonstrated on the record that it possessed the immunity tool, understood its constitutional consequence, and rationed it to its own advantage.

When the State wanted Petitioner's testimony—to probe “her demeanor and her affect, so that we can ask questions related to her competency as a witness”—it granted immunity for exactly that purpose. App. 107a, 64:22–25a; App. 108a, 65:1–4. The trial court immediately grasped what the grant accomplished: “I think the difference here though with the grant of immunity is that then I can direct her to answer the question.” App. 111a, 68:9–22. And on the strength of that limited grant, the court directed her to answer. App. 113a, 70:11–21. As to every allegation on which the deprived-child petition actually turned—beginning with whether she shot and killed the child's father—the State withheld immunity and collected the adverse inference instead. Her counsel captured the resulting position precisely: the court had already announced it would draw a negative inference from her invocations, “and, therefore, the offer of immunity that has no value to my client.” App. 112a, 69:19–25.

Under *Turley* and *Cunningham*, immunity is the constitutional price of compelled testimony—the mechanism by which the State may obtain answers while leaving the privilege whole. It is not a litigating instrument to be extended where testimony helps the government and withheld where silence does. The

record here forecloses any suggestion that the State lacked the means to proceed lawfully: it granted immunity, obtained a judicial direction to answer on the strength of the grant, and confined the grant to the subjects on which her answers would serve its examination. As to everything else, the same office preferred the inference to the testimony. A regime in which the State may select, question by question, whether to buy the answer with immunity or to take the silence as evidence leaves the witness penalized whichever way she turns, leaving nothing to the privilege but its name.

This feature also answers any suggestion that child welfare proceedings cannot function if parents may invoke the privilege without consequence. The State always holds the solution in its own hands. If the parent's account is genuinely necessary to protect the child, the State may immunize her and compel it—as Oklahoma did here the moment the testimony suited its purposes. What it may not do is keep the prosecution's options open and charge the cost of that choice to the parent's custody of her child. The question whether the penalty cases tolerate that arrangement is squarely presented on a record in which the selective grant, its purpose, and its effect were all stated aloud in open court, and every ruling was preserved by objection and continuing exception.

II. The decision below conflicts with *Armstrong v. Manzo*.

In *Armstrong v. Manzo*, this Court did not hold that a later hearing can never cure the want of notice. 380 U.S. 545 (1965). Its holding is more precise, and it decides this case. There, a father was given no notice of the proceeding in which his child was adopted. *Id.* at 548. When he learned of the decree, he moved to set

it aside, and the Texas courts gave him a full adversarial hearing but only to then hold the original defect was cured. *Id.* at 549. This Court reversed, unanimously, because the later hearing had not wiped the slate clean: “Had the petitioner been given the timely notice which the Constitution requires, the Manzós, as the moving parties, would have had the burden of proving their case.” *Id.* at 551. Instead, the father arrived at the later hearing bearing the burden of dislodging an existing decree. *Id.* “The burdens thus placed upon the petitioner were real, not purely theoretical.” *Id.* A hearing satisfies due process only if it comes at the right moment: “It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” *Id.* at 552. The rule of *Armstrong*, then, is not that later process is always inadequate; rather, it is that later process is adequate *only if* it restores the parties to the positions they would have occupied had notice been given. A hearing that begins with the deprivation already accomplished, and the deprived party carrying the burden of undoing it, is not that hearing.

Measured against that rule, the decision below is wrong on its own conceded facts. The Court of Civil Appeals acknowledged that “[t]here seems to be no dispute in the record that notice of the emergency custody hearing was not provided to Appellant,” and that she “had a statutory right to notice.” App. 21a, ¶ 12. The February 21 hearing was the first and, in the nature of an emergency removal, the *only* occasion on which the State’s emergency seizure of E.O.D. could be tested before it hardened into the working premise of the case. It went forward without notice to the mother and without her presence. There was no waiver: her counsel appeared and expressly declined to waive her right to be heard. Moreover, this was no obstacle of her

own doing: she was in the State's own custody, detained within sight of the courthouse, kept away, the court was told, by a frozen gate at the jail. App. 65a, 59:2–25; App. 66a, 60:1–12; App. 67a, 61:1–13. The court extended the emergency custody order in her absence. The order was filed on February 25; the deprived-child petition followed on February 26. The architecture of the case was in place before the mother was ever heard.

Nor was the hearing an empty formality whose outcome notice could not have changed. Had Petitioner been heard on February 21, the State—as the party that had obtained emergency custody *ex parte*—would have borne the burden of justifying it. And there was something to justify. The child had not been in limbo when the State intervened: she was in the care of her maternal grandfather, under an emergency guardianship a court had granted at 9:45 A.M. that morning, more than four hours before the State sought its own order. The State would have had to explain why removing the child from a judicially sanctioned placement with her own family was necessary to protect her. Petitioner never had the opportunity to require that explanation. As in *Armstrong*, the constitutional injury is measured by the burden she was never permitted to impose on the moving party.

Nothing thereafter restored her to her original position. The child—removed on February 14 from the guardianship her grandfather had obtained hours earlier—remained in the placement the State had chosen. The extended order stood; a *nunc pro tunc* order later confirmed it. From February 21 forward, Petitioner occupied exactly the position *Armstrong* condemned: at every subsequent hearing she was, functionally, the moving party, litigating against an

accomplished removal and a hardening status quo rather than against a State bearing its burden in the first instance. That the burdens were “real, not purely theoretical” is documented by the trial judge himself, who five months after adjudication was still asking why the child was in State custody and reporting that “the really only good answer anybody seems to have is because that’s the way we do things” —this of a child who, in the same breath, “does not suffer for lack of resources, does not suffer for a lack of a safe place to be, does not suffer for a lack of schooling, education, health care.” App. 137a, 16:5–12. Inertia of that kind is precisely what an accomplished removal produces, and precisely what timely notice and a contested first hearing exist to prevent.

The rationale of the court below makes the conflict explicit. Quoting *Cate v. Archon Oil Co.*, 1985 OK 15, for the rule that due process requires participation “before one’s rights are irretrievably altered,” it held the February 21 defect harmless because the rights altered that day were not yet irretrievable. Notice the court’s inversion of this Court’s decision. *Armstrong* asks whether the belated hearing restored the parent to the position timely notice would have secured; the court below asked instead whether the un-noticed hearing had done damage beyond later repair, and—finding the answer uncertain—excused the defect. Under that test, the constitutionally required hearing may always be deferred to the point of no return, because until the point of no return is reached, the deprivation is, by definition, still retrievable. That is the opposite of an opportunity to be heard “at a meaningful time.” And this Court has twice rejected the premise that reversibility excuses process withheld. “[N]o later hearing and no damage award can undo the fact that the arbitrary taking . . . *has*

already occurred.” Fuentes v. Shevin, 407 U.S. 67, 81–82 (1972) (emphasis added). “This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.” *Id.* (quoting *Stanley v. Illinois*, 405 U.S. 645, 647 (1972)).

The State will answer that emergency custody orders are temporary and interlocutory, superseded by the adjudication that followed, and, as such, incapable of exacting a due process violation that survives it. Petitioner asserts three responses. First, *Armstrong* itself forecloses the premise: the adoption decree there was equally subject to being reopened—indeed, reopening it was the very proceeding the Texas courts afforded—but the availability of later revision did not supply the process due at the outset. The focus under *Armstrong* is not whether the order could someday be revisited but rather who bore the burdens in the interval. Second, the interval was not benign. It ran from the seizure of the child through an adjudication at which the State’s case was fortified by the adverse inferences described above; the temporary order fixed the child’s placement, framed the deprived-child petition filed five days later, and defined the baseline every subsequent hearing took as given. A deprivation is not unconstitutional only if it proves permanent. *Fuentes*, 407 U.S. at 81–82; *Stanley*, 405 U.S. at 647. Third, the logic of the holding below has no stopping point. If a total failure of notice at the removal stage is cured whenever the parent participates in the proceedings that follows—as every parent must, on pain of default—then notice at the removal stage is never constitutionally required, for any parent, in any case. That is the practical holding below, and it cannot be squared with this Court’s cases.

The court below conceded every fact on which the *Armstrong* analysis turns: no notice despite a statutory right to it, and an extension of emergency custody entered in the parent's absence. What divides the parties is a pure question of federal constitutional law—whether later participation cures the total absence of notice at the hearing where custody is taken. *Armstrong* answers that question one way; the decision below answers it the other. That conflict is one for this Court to resolve.

III. The questions are important, recurring, and presented cleanly.

Emergency removal is the front door of the child welfare system. The overwhelming majority of children who enter foster care enter it through an *ex parte* emergency order of the kind at issue here, tested—if at all—at a prompt hearing like the one held on February 21. What process that first hearing must afford the parent is therefore not a peripheral question of juvenile procedure; it is the question that determines the value of the Due Process Clause at the moment the State first separates a child from her parent. Even more, removals of this kind cluster around precisely the circumstance this case presents: a sudden death or injury in the home, a criminal investigation of the parent, and parallel civil and criminal proceedings prosecuted by the same office. The two questions presented—what process the first hearing must afford, and whether the State may then build its civil case out of the parent's constitutionally protected silence—arise in these paired proceedings as a matter of course, and they compound each other. The parent who is denied a voice at the removal stage because she sits in the State's jail is the same parent who, months later, must choose between surrendering

her privilege or surrendering her case. A constitutional rule for either question that ignores the other leaves parents unprotected at the point of maximum vulnerability.

Yet these questions almost never reach this Court. Emergency custody orders are interlocutory; they expire, are extended, or are merged into adjudications long before any petition could arrive here. By then, the notice defect has been recharacterized—as it was here—as cured by whatever came after. The adverse-inference question likewise evades review because it lies embedded in fact-bound custody appeals resolved in unpublished opinions, and because the parents against whom the practice operates are, by definition, simultaneously defending criminal prosecutions that consume their resources and their counsel’s attention. The consequence is a body of state-court doctrine that governs the most consequential encounters between families and government built almost entirely without this Court’s participation. This case is the rare vehicle in which both questions were preserved by contemporaneous objection and continuing exception, pressed at every level, and resolved in a final judgment.

The notice question, moreover, has divided Oklahoma’s own officers. In a companion original proceeding concerning this same child, No. 123,788, the Attorney General of Oklahoma appeared and urged that a parent is entitled to notice and a meaningful opportunity to be heard at each critical stage of a deprived-child proceeding, and that later process cannot cure its absence.

Finally, no court in this case has engaged the federal questions on their merits. The Court of Civil Appeals decided the Fifth Amendment claim without citing any of this Court’s controlling authority, all of which were

briefed to it, and decided the notice claim on a state-law formulation that inverts this Court's decision in *Armstrong*. For its part, the State chose silence, filing no answer brief on these issues. App. 26a, n.3. The Supreme Court of Oklahoma denied review without opinion, over Justice Darby's noted dissent. The questions have been fully preserved and conclusively resolved against Petitioner, but they have never once been answered with this Court's authorities on the table. If certiorari is denied, they never will be—not in this case, and, on the pattern of the last five decades, not in the cases that follow it. This Court is the first court that will decide them.

IV. The judgment is final, and the posture of the case is no obstacle.

The judgment below is final within the meaning of 28 U.S.C. § 1257(a). Oklahoma treats a deprived-child adjudication as a final, appealable order—which is why this appeal was taken, briefed, decided by the Court of Civil Appeals, and presented to the Supreme Court of Oklahoma on certiorari. The state appellate process has run its course, and the federal questions have been conclusively resolved: no proceeding that remains below can revisit the adjudication or the rulings that produced it. To whatever extent the continuing juvenile case leaves further proceedings in prospect, review now is proper under *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). This Court, in *Cox Broadcasting*, recognized that a state-court judgment may be final for purposes of § 1257 although related proceedings continue below, where the federal issue has been finally determined by the State's highest court available, will not be affected by what remains, and would as a practical matter escape review—or inflict irreparable consequences—if the

Court stayed its hand. Each consideration points the same way here. The federal questions will not be revisited below; what remains is disposition and, now, termination—a motion to terminate Petitioner’s parental rights was filed on January 21, 2026, and an adjudication procured by the means challenged here is its predicate. If review must await the end of the termination process, the questions will arrive, if ever, only after the parent-child relationship has been severed: the very injury the constitutional rules at issue exist to prevent, and the pattern by which these questions have evaded this Court’s review to date.

Petitioner is equally candid about the posture. The opinion below is unpublished, and the petition asks this Court to review rulings that could be described as error correction in a single family’s case. But the errors were not idiosyncratic; they were applications of what the court below understood to be settled practice—*Baxter* plus a civil label on the Fifth Amendment question, and later participation as a cure for absent notice. That the rulings described in this petition could be entered on this record, affirmed without an answer brief from the State, and left unpublished is itself a measure of how ordinary the practice has become; the unpublished designation reflects the routineness of the disposition, not the insignificance of the questions. Nor does the case carry the usual hazards of a fact-bound vehicle. The challenged rulings are purely legal. They appear in the transcript in the trial court’s own words, announced with a clarity rarely found in any record. No factual dispute clouds either question: the absence of notice is conceded, the invocation of the privilege is on the page, and the trial court stated on the record both what it would infer and why. And because the trial court simultaneously found “zero evidence” of abuse while the State’s own specialist

described a thriving child, the case isolates the constitutional rulings from any suggestion that the outcome rested on an independent evidentiary foundation. The questions presented will not come to this Court more cleanly.

CONCLUSION

For each of the reasons set forth herein, Petitioner respectfully requests that this Court grant her Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED****United States Constitution, Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**United States Constitution, Amendment XIV,
Section 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

25 U.S.C. § 1912(e)

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the

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continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

OKLA. STAT. tit. 10A, § 1-4-201

Circumstances authorizing taking a child into custody – Joint response by Department of Human Services, law enforcement, and district courts – Safety evaluation

A. Pursuant to the provisions of this section, a child may be taken into custody prior to the filing of a petition:

1. By a peace officer or employee of the court, without a court order if the officer or employee has reasonable suspicion that:

a. the child is in need of immediate protection due to an imminent safety threat,

b. the circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child, or

c. the child, including a child with a disability, is unable to communicate effectively about abuse, neglect or other safety threat or is in a vulnerable position due to the inability to communicate effectively and the child is in need of immediate protection due to an imminent safety threat; or

2. By an order of the district court issued upon the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the

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court that a continuation of the child in the home or with the caretaker of the child is contrary to the child's welfare and there is reasonable suspicion that:

- a. the child is in need of immediate protection due to an imminent safety threat,
- b. the circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child, or
- c. the child, including a child with a disability, is unable to communicate effectively about abuse, neglect or other safety threat or is in a vulnerable position due to the inability to communicate effectively and the child is in need of immediate protection due to an imminent safety threat.

The application and order may be verbal and upon being advised by the district attorney or the court of the verbal order, law enforcement shall act on such order. If verbal, the district attorney shall submit a written application and proposed order to the district court within one (1) judicial day from the issuance of the verbal order. Upon approval, the application and order shall be filed with the court clerk; or

3. By order of the district court when the child is in need of medical or behavioral health treatment in order to protect the health, safety, or welfare of the child and the parent, legal guardian, or custodian of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action, the court shall specifically include in the emergency order authorization for such medical

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or behavioral health evaluation or treatment as it deems necessary.

B. 1. By January 1, 2010, the Department in consultation with law enforcement and the district courts shall develop and implement a system for joint response when a child is taken into protective custody by a peace officer pursuant to paragraph 1 of subsection A of this section. The system shall include:

- a. designation of persons to serve as contact points for peace officers, including at least one backup contact for each initial contact point,

- b. a protocol for conducting a safety evaluation at the scene where protective custody is assumed to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody,

- c. the development of reception centers for accepting protective custody of children from peace officers when the Department is unable to respond at the scene within a reasonable time period,

- d. a protocol for conducting a safety evaluation at the reception center within twenty-three (23) hours of the assumption of protective custody of a child to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody, and

- e. a protocol, when the child cannot safely be left in the home, for transporting a child to the home

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of a relative, kinship care home, an emergency foster care home, a shelter, or any other site at which the Department believes the child can be protected, provided that the Department shall utilize a shelter only when the home of a relative, kinship care home, or emergency foster care home is unavailable or inappropriate.

2. Beginning January 1, 2010, no child taken into protective custody under paragraph 1 of subsection A of this section shall be considered to be in the emergency custody of the Department until the Department has completed a safety evaluation and has concluded that the child faces an imminent safety threat and the court has issued an order for emergency custody.

3. If the safety evaluation performed by the Department of a child taken into protective custody under paragraph 1 of subsection A of this section indicates that the child does not face an imminent safety threat, the Department shall restore the child to the custody and control of the parent, legal guardian, or custodian of the child.

C. When an order issued by the district court pursuant to subsection A of this section places the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 1-4-203 of this title, an employee of the Department may execute such order and physically take the child into custody in the following limited circumstance:

1. The child is located in a hospital, school, or day care facility; and
2. It is believed that assumption of the custody of the child from the facility can occur without risk to the child or the employee of the Department.

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Otherwise, the order shall be executed and the child taken into custody by a peace officer or employee of the court.

D. The court shall not enter a prepetition emergency custody order removing a child from the home of the child unless the court makes a determination:

1. That an imminent safety threat exists and continuation in the home of the child is contrary to the welfare of the child; and
2. Whether reasonable efforts have been made to prevent the removal of the child from the child's home; or
3. An absence of efforts to prevent the removal of the child from the home of the child is reasonable because the removal is due to an emergency and is for the purpose of providing for the safety and welfare of the child.

E. Whenever a child is taken into custody pursuant to this section:

1. The child may be taken to a kinship care home or an emergency foster care home designated by the Department, or if no such home is available, to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court;
2. Unless otherwise provided by administrative order entered pursuant to subsection F of this section, the child may be taken before a judge of the district court or the court may be contacted verbally for the purpose of obtaining an order for emergency custody. The court may place the child in the emergency custody of the Department or some other

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suitable person or entity pending further hearing specified by Section 1-4-203 of this title;

3. The child may be taken directly to or retained in a health care facility for medical treatment, when the child is in need of emergency medical treatment to maintain the child's health, or as otherwise directed by the court; or

4. The child may be taken directly to or retained in a behavioral health treatment facility for evaluation or inpatient treatment, in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, when the child is in need of behavioral health care to preserve the child's health, or as otherwise directed by the court; and

5. Unless otherwise provided by administrative order entered pursuant to subsection F of this section, the district court of the county where the custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

F. The court may provide, in an administrative order issued pursuant to this section, for the disposition of children taken into custody and notification of the assumption of such custody.

1. Such order or rule shall be consistent with the provisions of subsection E of this section and may include a process for release of a child prior to an emergency custody hearing. The administrative order shall not include a provision to modify protective custody of a child to emergency custody of

the Department upon admission of a child to a shelter; and

2. The administrative order may require joint training of peace officers and Department staff deemed necessary by the court to carry out the provisions of the administrative order.

G. No child taken into custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility.

H. When a determination is made by the Department that there is a significant risk of abuse or neglect, but there is not an imminent safety threat to the child, the Department may recommend a court-supervised and Department-monitored in-home placement. The Department shall assist the family in obtaining the services necessary to maintain the in-home care and correct the conditions leading to the risk determination.

I. Any peace officer, employee of the court, or employee of the Department is authorized to transport a child when acting pursuant to this section. Such persons and any other person acting under the direction of the court, who in good faith transports any child or carries out duties pursuant to this section, shall be immune from civil or criminal liability that may result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed. This provision shall not apply to damage or injury caused by the willful, wanton or gross negligence or misconduct of a person.

J. A parent or person responsible for the child who is arrested on a charge or warrant other than child abuse or neglect or an act of child endangerment may designate another person to take physical custody of the child. Upon this request, the peace officer may

release the child to the physical custody of the designated person.

OKLA. STAT. tit. 10A, § 1-4-202

Written notification of emergency custody hearing

A. The peace officer, employee of the court, or the employee of the Department of Human Services responsible for assuming physical custody of a child shall provide the parent, legal guardian, or physical custodian of the child with immediate written notice of the protective or emergency custody of the child if personally present, or if not present as soon as possible.

B. The written notice shall inform the parents, legal guardian, or custodian of the following:

1. That an emergency custody hearing to determine custody of the child will occur within two (2) judicial days from the date the child was taken into custody;
2. The date, time, and place for the emergency custody hearing;
3. The nature of the allegation that led to placement of the child into protective or emergency custody;
4. The address and telephone number of the applicable law enforcement agency and the Department; and
5. The right to contact an attorney.

C. The written notice shall also contain the following language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL REMAIN IN CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY

LOSE CUSTODY OF THIS CHILD OR YOUR
RIGHTS AS A PARENT MAY BE TERMINATED.”

OKLA. STAT. tit. 10A, § 1-4-203

*Emergency custody hearing – Affidavit – Notice to
relatives*

A. Within the next two (2) judicial days following the child being taken into protective or emergency custody, the court shall conduct an emergency custody hearing. At the hearing, information may be provided to the court in the form of oral or written reports, affidavits or testimony. Any information having probative value may be received by the court regardless of its admissibility under the Oklahoma Evidence Code. At the hearing the court shall:

1. Determine whether facts exist that are sufficient to demonstrate to the court there is reasonable suspicion that the child is in need of immediate protection due to abuse or neglect, or that the circumstances or surroundings of the child are such that continuation of the child in the child's home or in the care or custody of the parent, legal guardian, or custodian would present an imminent danger to the child;

2. Advise the parent, legal guardian, or custodian of the child in writing of the following:

- a. any right of the parent, legal guardian, or custodian to testify and present evidence at court hearings,
- b. the right to be represented by an attorney at court hearings,
- c. the consequences of failure to attend any hearings which may be held, and

d. the right to appeal and procedure for appealing an order of the court;

3. Determine custody of the child and order one of the following:

a. release of the child to the custody of the child's parent, legal guardian, or custodian from whom the child was removed under any conditions the court finds reasonably necessary to protect the health, safety, or welfare of the child, or

b. placement of the child in the custody of a responsible adult or licensed child-placing agency under any conditions the court finds reasonably necessary to protect the health, safety, or welfare of the child, or

c. whether to continue the child in or to place the child into the emergency custody of the Department of Human Services;

4. Order the parent, legal guardian, or custodian to complete an affidavit listing the names, addresses, and phone numbers of any parent, whether known or alleged, grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin and any comments concerning the appropriateness of the potential placement of the child with the relative. If no such relative exists, the court shall require the parent, legal guardian, or custodian to list any other relatives or persons with whom the child has had a substantial relationship or who may be a suitable placement for the child;

5. Direct the parent, legal guardian, or custodian to furnish the Department with a copy of the child's birth certificate within fifteen (15) days from the

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hearing if a petition is filed, unless otherwise extended by the court; and

6. In accordance with the safety or well-being of any child, determine whether reasonable efforts have been made to:

- a. place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and
- b. provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together.

B. The office of the State Court Administrator shall create an affidavit form and make it available to each court responsible for conducting emergency custody hearings. The affidavit form shall contain a notice to the parent, legal guardian, or custodian that failure to identify a parent or relative in a timely manner may result in the child being permanently placed outside of the home of the child's parent or relative. The affidavit form shall also advise the parent, legal guardian, or custodian of the penalties associated with perjury and contempt of court. The original completed affidavit shall be filed with the court clerk no later than five (5) days after the hearing or as otherwise directed by the court and a copy shall be provided to the Department.

C. 1. The Department shall, within thirty (30) days of the removal of a child, exercise due diligence to identify relatives. Notice shall be provided by the Department to the following adult relatives: all grandparents, all parents of a sibling of the child, where the parent has legal custody of the sibling, and other adult relatives of the child, including relatives suggested by the parents, as the court directs. The notice shall advise the relatives:

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- a. the child has been or is being removed from the custody of the parent or parents of the child,
 - b. of the options under applicable law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, and
 - c. of the requirements to become a foster family home and the additional services and supports available for children placed in the home.
2. Relatives shall not be notified if notification would not be in the best interests of a child due to past or current family or domestic violence. The Department may promulgate rules in furtherance of the provisions of this subsection.

OKLA. STAT. tit. 10A, § 1-4-508

Immunity for testimony – Records – Statements during evaluation or treatment

A. At any stage of a proceeding under the Oklahoma Children's Code:

1. The parent or legal guardian, the child's attorney, or the district attorney's office may apply for use immunity for a parent or legal guardian for in-court testimony. The in-court testimony of an immunized parent or legal guardian shall not be used against that parent or legal guardian in a criminal prosecution; provided, however, that the parent or legal guardian may be prosecuted for perjury that occurs during the testimony of the parent or legal guardian in a deprived proceeding;
2. The child's attorney or the district attorney's office may apply for use immunity for any records, documents, or other physical objects produced by the immunized parent or legal guardian in the deprived

proceeding, the production of which was compelled by a court order; or

3. The child's attorney or the district attorney's office may apply for use immunity for a parent or legal guardian for any statement that a parent or legal guardian makes in the course of a court-ordered psychological evaluation or treatment program to the professional designated by the Department of Human Services or authorized by the court in furtherance of the court's order. Such immunity shall attach only to those statements made during the course of the actual evaluation or treatment and specifically does not attach to statements made to Department employees, agents, or other representatives in the course of the investigation of alleged child abuse, neglect, or abandonment.

B. Any other information available to the professional designated by the Department or authorized by the court to perform the court-ordered evaluation or treatment shall not be the subject of any application or order for immunity.

OKLA. STAT. tit. 10A, § 1-4-603

Order of adjudication finding child to be deprived

A. If the court finds that:

1. The factual allegations in a petition filed by the state alleging that a child is deprived are supported by a preponderance of the evidence;
2. Such allegations are sufficient to support a finding that the child is deprived; and
3. It is in the best interests of the child that the child be declared to be a deprived child and made a ward of the court, then the court shall sustain the petition, and shall make an order of adjudication finding the

child to be deprived and shall adjudge the child as a ward of the court.

B. The order of adjudication shall include a statement that advises the parent that failure to appear at any subsequent hearing or comply with any requirements of the court may result in the termination of parental rights to the child.

C. When a child has been adjudicated deprived, the court shall enter a dispositional order pursuant to the provisions of Section 1-4-707 of this title.

D. When a child has been adjudicated deprived, the parent or other legal custodian shall register with the court clerk within two (2) days of the adjudication and provide a valid, current address or other place where the parent or other legal custodian may be served with a summons. In the event that the address or place where the parent or legal custodian may be served a summons changes during the course of the litigation, the parent or other legal custodian shall have the obligation of filing a change of address form with the clerk. In the event that an amended petition or motion is filed, the address listed on the form of the court clerk shall constitute the last-known address of the parent or other legal custodian unless the state has actual knowledge of the parent or other legal custodian's location.