

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1333

By: Larason

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1101 and 1107, as amended by Sections 14 and 20, Chapter 298, O.S.L. 1992, and 1130 (10 O.S. Supp. 1992, Sections 1101 and 1107), and 21 O.S. 1991, Sections 845 and 846, as amended by Sections 1 and 2, Chapter 265, O.S.L 1992, and 852 (21 O.S. Supp. 1992, Sections 845 and 846), which relate to children and certain religious exemptions for crimes against children; modifying certain religious exemptions; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1101, as amended by Section 14, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1101), is amended to read as follows:

Section 1101. When used in this title, unless the context otherwise requires:

1. "Child" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 1104.2 of this title, or who has been certified as an adult pursuant to Section 1112 of this title; provided that any person under

eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 1104.2 of this title, or who is not convicted after certification as an adult pursuant to Section 1112 of this title, shall continue to be subject to the jurisdiction of the juvenile court.

2. "Delinquent child" means a child who:

- a. has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of Sections 1101 through 1506 of this title, or
- b. has habitually violated traffic laws or traffic ordinances.

3. "Child in need of supervision" means a child who:

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

4. "Deprived child" means a child:

- a. who is for any reason destitute, homeless, or abandoned, or
- b. who does not have the proper parental care or guardianship or whose home is an unfit place for the

- child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be, or
- c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment, or
 - d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child, or
 - e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance, or
 - f. whose parent or legal custodian for good cause desires to be relieved of his custody.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly

accredited practitioner thereof shall ~~be considered~~, for that reason alone, ~~to be a deprived child adjudicated deprived~~ pursuant to ~~any provision of Sections 1101 through 1506 of this title~~. Nothing in this title shall preclude immediately assuming custody of a child in accordance with the provisions of Section 1107 of this title and rendering medical services when the child's health requires it. The phrase dependent and neglected shall be deemed to mean deprived.

5. "Child in need of mental health treatment" means a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act.

6. "Handicapped child" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

7. "Department" means the Department of Human Services.

8. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Section 1103 of this title are supported by the evidence and whether a child should be adjudged to be a ward of the court.

9. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the court.

10. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

11. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the

lawful custody and treatment of juveniles and may be owned or operated by a public or private agency.

12. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

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

14. "Day treatment" means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

15. "Group home" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

16. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may

include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

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

18. "Community residential center" means a residential facility for no more than twenty children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

19. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident.

20. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act.

21. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent children.

22. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

23. "Treatment center" means a facility maintained by the state for the care, education, training, treatment, and rehabilitation of

children who are in the custody of the Department and who have been found by the court to be in need of treatment.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1107, as amended by Section 20, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1107), is amended to read as follows:

Section 1107. A. 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 child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

2. Pursuant to an order of the district court issued on 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 court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the court at the time fixed. If detained, such child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court. If no judge be available locally, the person having the child in custody shall immediately report his

detention of the child to the presiding judge of the judicial administrative district, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a regional juvenile detention center, beyond the next two (2) judicial days unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in Section 1107.1 of this title. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent or other person appointed by the court, or be detained pursuant to the provisions of Section 1107.1 of this title in such place as shall be designated by the court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the court, or he shall be taken immediately before a judge of the district court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the court taking the child into custody shall immediately report the fact of the detention of the child to a judge of the district court in the county in which the child was taken into custody. If no judge is available locally, the detention shall be reported immediately to the presiding judge of the judicial administrative district, or if the presiding judge of the judicial administrative district cannot be reached, then to any judge regularly serving within the judicial administrative district. Within the next two (2) judicial days following the child being

taken into custody, and thereafter at such intervals as may be determined by the court, the court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to subsection B of Section 1104.1 of this title is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. If the parent or guardian is contacted and is unwilling to consent to such medical treatment, the district attorney in the county where the child is located shall be contacted for the purpose of making application to the district court for an order to authorize necessary medical treatment. Nothing in this section

shall prohibit a verbal application by the district attorney if an emergency exists which requires immediate treatment to preserve the child's health. The parent, guardian or custodian of the child shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

E. A child who has been taken into custody as otherwise provided by this title who appears to be a child in need of mental health treatment may be admitted to a mental health facility on an emergency psychiatric basis or for an inpatient mental health evaluation or inpatient mental health treatment only in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1130, is amended to read as follows:

Section 1130. A. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a parent to a child in the following situations:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph (4) of Section 60.5 of this title, who desires to terminate his parental rights; provided that the court finds that such termination is in the best interests of the child; or

2. A finding that a parent who is entitled to custody of the child has abandoned it; or

3. A finding that:

a. the child is deprived, as defined in this chapter, and

- b. such condition is caused by or contributed to by acts or omissions of his parent, and
- c. termination of parental rights is in the best interests of the child, and
- d. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; or

4. A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; or

5. A conviction in a criminal action pursuant to the provisions of Sections 843, 845, 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or a finding in a deprived child action either that:

- a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court

or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or

- b. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or

6. A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

7. A finding that all of the following exist:

- a. the child is deprived, as defined in this chapter, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and
- d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child

and the manner in which the parent has exercised parental rights and duties in the past, and

- e. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

8. A finding that all of the following exist:

- a. the child is deprived as defined in this chapter, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- d. the continuation of parental rights would result in harm or threatened harm to the child, and
- e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and
- f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

B. Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits or neglects, without lawful

excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a misdemeanor. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a period not exceeding one (1) year. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where ~~permanent physical damage could result to such child~~ the child's health requires it due to harm or a substantial risk of harm from physical or mental injury to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated. ~~Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare.~~ Psychiatric and psychological testing and counseling are exempt from the provisions of this act.

C. An order directing the termination of parental rights is a final appealable order.

D. A parent or guardian of a child may petition the court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs 1, 2 or 4 of subsection A of this section. A prior finding by a court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 845, as amended by Section 1, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1992, Section 845), is amended to read as follows:

Section 845. A. It is the policy of this state to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of persons responsible for the care and protection of such children.

B. As used in Sections 846 through 848 of this title:

1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare;

2. "Harm or threatened harm to a child's health or welfare" includes but is not limited to nonaccidental physical or mental injury; sexual abuse, sexual exploitation, or negligent treatment or maltreatment including the failure to provide adequate food, clothing, shelter, or medical care ~~except as provided for in Section 846 of this title;~~

3. "Child" means a person under the age of eighteen (18) years;

4. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution or facility; or an owner, operator, or employee of a

child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

5. "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's welfare; and

6. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's welfare.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 846, as amended by Section 2, Chapter 265, O.S.L 1992 (21 O.S. Supp. 1992, Section 846), is amended to read as follows:

Section 846. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- d. other person

having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

B. It shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided in this section. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his parents or other persons responsible for his care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. 1. The county office receiving any report as provided in this section shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services for the purposes set forth in subsection D of this section.

2. Whenever, after a preliminary inquiry or investigation, the Department of Human Services determines that an alleged abuse or neglect of a child was:

- a. perpetrated by someone other than a person responsible for the child's health and welfare, and
- b. does not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral. After making the referral, the Department shall not be responsible for further investigation of the case unless notice is received from the law enforcement agency as provided by paragraph 3 of this subsection. The Department of Human Services shall promulgate rules and regulations for the implementation of the provisions of this subsection. Said rules and regulations shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

3. Any law enforcement agency receiving a referral as provided in this subsection shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department. Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the

local child welfare office for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral.

D. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this subsection.

E. 1. All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties.

2. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

~~F. No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.~~

~~G.~~ 1. In every case filed under Section 843 of this title, the judge of the district court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the

district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

2. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

3. At such time as the information maintained by the registry provided for by subsection D of this section is indexed by perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 852, is amended to read as follows:

Section 852. A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control over a child as defined in Section 1101 of Title 10 of the Oklahoma Statutes who willfully omits, without lawful excuse, to perform any duty imposed upon such parent, guardian, or person having custody or control of a

child by law to furnish necessary food, clothing, shelter, monetary child support, or medical attendance for such child, upon conviction, is guilty of a misdemeanor. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attention shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, is guilty of a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical ~~care~~ services shall be provided where ~~permanent physical damage could result~~ the child's health requires it due to harm or a substantial risk of harm from physical or mental injury to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

~~Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare.~~ Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

B. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-5276

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