

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 388

By: Brown of the Senate

and

Toure of the House

(children - Child Death Review Board - expanding list of records and reports which may be requested and obtained - modifying number of members and composition of Child Death Review Board - emergency)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

An Act relating to children; amending 10 O.S. 1991, Section 1107, as last amended by Section 34, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1107), which relates to taking into custody of children; modifying procedure for release of certain children; making it a misdemeanor to refuse to assume custody of a child in a timely manner; amending 10 O.S. 1991, Sections 1150.2, as last amended by Section 1, Chapter 31, O.S.L. 1994, and 1150.3, as amended by Section 2, Chapter 195, O.S.L. 1993 (10 O.S. Supp. 1994, Sections 1150.2 and 1150.3), which relate to the Child Death Review Board; clarifying statutory reference; modifying powers and duties of Board; expanding list of records and reports to be requested; construing

section; requiring submission of certain report by certain date; modifying number of members and composition of Child Death Review Board; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107, as last amended by Section 34, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, 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, without a court order for any criminal offense, 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. By an employee of the court without a court order, 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;

3. 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 or there is probable cause to believe the child has committed a crime or is in violation of the terms of his probation, parole or order of the court; and

4. By order of the district court pursuant to subsection F of this section when the child is in need of medical treatment or other action in order to protect the child's health or welfare and the parent, guardian or person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action.

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 a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment. In addition, if a parent, guardian, attorney or custodian of the child is notified that the child has been taken into custody, it shall be a misdemeanor for the parent, guardian, attorney or custodian to refuse to assume custody of the child within a timely manner. If detained, ~~such~~ the 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 by the peace officer or the court. At the hearing provided for in this subsection, the court shall advise the parent or legal guardian of the child in writing of:

1. The procedures which will be followed with regard to determining custody of the child;
2. The right of the parent or guardian to testify and present evidence at court hearings;
3. The right to be represented by an attorney at court hearings;
4. The consequences of failure to attend any hearings which may be held; and
5. The right and procedure for appealing the findings of a court on custody issues.

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. 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 5-501 et seq. of Title 43A of the Oklahoma Statutes.

F. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the child's health or welfare and the parent, guardian or person having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the child's health or welfare, the court may issue an emergency ex parte order upon application of the district

attorney of the county in which the child is located. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the child's health or welfare. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, guardian or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this section, whenever a child is in need of medical treatment to protect the child's health or welfare, or whenever any other action is necessary to protect the child's health or welfare, and the parent, guardian or person having custody or control is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the district attorney of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, guardian or person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, guardian or person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

- b. 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 subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1150.2, as last amended by Section 1, Chapter 31, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1150.2), is amended to read as follows:

Section 1150.2 A. There is hereby re-created until July 1, 2000, in accordance with the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Child Death Review Board within the Oklahoma Commission on Children and Youth. The Board shall have the power and duty to:

1. Conduct case reviews of child deaths in this state;
2. Develop accurate statistical information and identification of child deaths due to abuse and neglect;
3. Improve the ability to provide protective services to the siblings of abused or neglected children who may still be living in a dangerous environment; and
4. Improve policies, procedures and practices within the child protection system.

B. In carrying out its duties and responsibilities the Board shall:

1. Establish criteria for cases of child death subject to specific, in-depth review or investigation by the Board;
2. Conduct a specific case review of those cases ~~referred by the Office of Chief Medical Examiner~~ where the cause of death is or may be related to child abuse or neglect;
3. Establish and maintain statistical information related to child deaths resulting from child abuse and neglect including, but not limited to, demographic and medical diagnostic information;

4. Review the policies, practices, and procedures of the child protection system and make specific recommendations to the entities comprising the child protection system for actions necessary for the improvement of ~~said~~ the system;

5. As necessary and appropriate, for the protection of the siblings of a child whose death is the result of child abuse or neglect, refer specific cases to the Department of Human Services or the appropriate district attorney for further investigation;

6. Request and obtain a copy of all records and reports pertaining to a child whose case is under review including, but not limited to ~~7~~:

- a. the medical examiner's report,
- b. hospital records,
- c. school records,
- d. court records,
- e. prosecutorial records,
- f. local, state, and federal law enforcement records,
including, but not limited to, the Oklahoma State
Bureau of Investigation (OSBI),
- g. fire department records,
- h. State Department of Health records, including birth
certificate records,
- i. medical and dental records,
- j. Department of Mental Health and Substance Abuse
Services and other mental health records,
- k. emergency medical service records, and
- l. Department of Human Services' ~~protective service~~
files.

Confidential information provided to the Board shall be maintained by the Board in a confidential manner as otherwise required by state and federal law;

7. Conduct ~~investigations~~ reviews of specific cases of child deaths and request the preparation of additional information and reports as determined to be necessary by the Board including, but not limited to, clinical summaries from treating physicians, chronologies of contact, and second opinion autopsies.—~~Second opinion autopsies shall be requested through the Office of the Chief Medical Examiner as otherwise provided by law;~~

8. Recommend ~~alternate~~, when appropriate, amendment of the cause or manner of death determinations in cases where abuse or neglect as the cause of death is documented but said cause is not shown listed on the death certificate; and

9. Subject to the approval of the Oklahoma Commission on Children and Youth, exercise all incidental powers necessary and proper for the implementation and administration of the Child Death Review Board Act.

C. ~~The Child Death Review Board may receive,~~ review and ~~discuss,~~ discussion of individual cases of death of a child shall be conducted in executive session, ~~information on individual child abuse investigations and prosecution; provided, however, that the Child Death Review Board shall assure~~ and in compliance with the confidentiality requirements of Section 846 of Title 21 of the Oklahoma Statutes. ~~Except when discussing individual cases, the Board shall comply~~ All other business shall be conducted in accordance with the provisions of the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes. All discussions of individual cases and any writings produced by or created for the Board in the course of its review of any individual case, including any specific action or remedial measure and recommended by the Board as the result of a review of an individual case of the death of a child, shall be privileged and shall not be admissible in evidence in any proceeding. The Board shall periodically conduct meetings to discuss organization and business

matters and any actions or recommendations aimed at improvement of the child protection system ~~and such meetings~~ which shall be subject to the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes.~~ Part of any meeting of the Board may be specifically designated as a business meeting of the Board subject to the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes.~~

D. The Board shall ~~make~~ submit an annual statistical report ~~of its findings and~~ on the incidence and causes of the death of children in this state during the past calendar year and submit a copy of this report, including its recommendations ~~for the improvement of the child protection system~~ to the Governor, ~~the Oklahoma Public Welfare Commission, the Oklahoma Commission on Children and Youth,~~ the President Pro Tempore of the Senate, and the Speaker of the House of Representatives ~~and each agency or organization affected by the report~~ on or before January 31 of each year. The Oklahoma Commission on Children and Youth shall review the report of the Board and, as appropriate, incorporate the findings and recommendations into the annual Commission report and State Plan for Services to Children and Youth.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1150.3, as amended by Section 2, Chapter 195, O.S.L. 1993 (10 O.S. Supp. 1994, Section 1150.3), is amended to read as follows:

Section 1150.3 A. The Child Death Review Board shall be composed of ~~twenty-one (21)~~ twenty-six (26) members, or their designees, as follows:

1. ~~Ten~~ Thirteen of the members shall be:
 - a. the Chief Medical Examiner ~~or his designee,~~
 - b. ~~the~~ Director of the Department of Human Services ~~or his designee.~~ The designee of the Director of the Department of Human Services shall be a person

assigned to the Child Welfare Division of the
Department,

- c. the State Commissioner of Health ~~or his designee~~,
- d.—the Director of the Office of Child Abuse Prevention
~~or his designee~~,
- e. the Director of the Oklahoma Commission on Children
and Youth ~~or his designee~~,
- f.—the Chief Child Abuse Medical Examiner ~~or his
designee~~,
- g. the ~~Chief~~ Medical Director of Maternal and ~~Child~~
Infant Health Services of the State Department of
Health ~~or his designee~~,
- h.—the Director of the Department of Mental Health and
Substance Abuse Services ~~or his designee~~,
- i. the ~~Chairman~~ Chair of the Child Protection Committee
of the Children's Hospital of Oklahoma ~~or his
designee~~,
- j. the Director of the Office of Juvenile Affairs,
- k. the Chief of Injury Prevention Services of the State
Department of Health,
- l. a physician from Maternal and Infant Health Services
within the State Department of Health, and
- ~~j.~~ m. the State Epidemiologist of the State Department of
Health ~~or his designee~~; and

2. ~~Eleven~~ Thirteen of the members shall be appointed by the
Director of the Oklahoma Commission on Children and Youth. ~~They,~~
shall serve for ~~a term~~ terms of two (2) years, and ~~may~~ shall be
~~reappointed~~ eligible for reappointment. ~~Said~~ The members shall be
persons having training and experience in matters related to ~~child~~
the abuse or neglect of children. The appointed members shall
include:

- a. a law enforcement officer selected from ~~a list~~ lists submitted by the executive board of ~~an organization~~ organizations representing sheriffs and peace officers in this state ~~or such officer's designee,~~
- b. ~~a member of the judiciary selected from a list submitted by the Chief Justice of the Supreme Court or such member's designee,~~
- e. an attorney licensed in this state who is in private practice selected from a list submitted by the executive board of the Oklahoma Bar Association ~~or such attorney's designee,~~
- d. c. a district attorney selected from a list submitted by the District Attorney's Council ~~or such district attorney's designee,~~
- e. d. ~~a pediatric allopathic physician selected from a list~~ lists submitted by ~~a statewide organization~~ organizations representing physicians in this state ~~or such physician's designee,~~
- f. e. a ~~pediatric osteopathic~~ physician selected from a ~~list~~ lists submitted by ~~a statewide organization~~ organizations representing osteopathic physicians in this state ~~or such physician's designee,~~
- g. f. a ~~social worker licensed in this state who is not an employee of the Department of Human Services selected from a list submitted by each organization in this state representing social workers in this state or such social worker's designee~~ member of the State Post-Adjudication Review Advisory Board,
- h. g. a ~~psychologist licensed in this state~~ social worker selected from a list submitted by each organization representing ~~psychologists in this~~

~~state or such psychologist's designee~~ social workers,

- ~~i.~~ ~~a representative of the State Foster Care Review Board or such representative's designee,~~
- ~~j.~~ ~~a representative of the Oklahoma Casa Association or such representative's designee, and~~
- ~~k.~~ h. an individual selected from lists submitted by Oklahoma court-appointed special advocate associations,
- i. a psychologist selected from lists submitted by Oklahoma psychological associations,
- ~~j.~~ ~~a member of an a Native American Indian Tribe who is a citizen of this state and is involved in the placement area of Indian protection of Native American children under the Indian Child Welfare Act or such member's designee selected from a list submitted by the Office of Indian Affairs,~~
- k. an individual selected from lists submitted by Oklahoma coalitions or associations against domestic violence and sexual assault,
- l. a pediatrics physician selected from lists submitted by organizations of pediatric physicians or osteopaths, and
- m. a member of an emergency medical technicians association.

B. ~~The~~ Every two (2) years the Board shall ~~annually~~ elect from among its membership a ~~Chairman~~ Chair and a ~~Vice Chairman~~ Vice Chair. The Board shall meet at least quarterly and may meet more frequently as necessary as determined by the ~~Chairman~~ Chair. Members shall serve without compensation but may be reimbursed for necessary travel out of funds available to the Commission pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of

Title 74 of the Oklahoma Statutes; provided, that ~~said~~ the reimbursement shall be paid in the case of state employee members by the agency employing the member.

C. With funds appropriated or otherwise available for that purpose, the Commission shall provide administrative assistance and services to the Child Death Review Board.

SECTION 4. 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."

Passed the House of Representatives the 18th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate