STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2133 By: Seikel

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1116.6, as amended by Section 4, Chapter 72, O.S.L. 1993 (10 O.S. Supp. 1996, Section 1116.6), which relates to State Postadjudication Review Advisory Board; increasing membership; providing for duties; amending 10 O.S. 1991, Sections 1115.2, as renumbered by Section 199, Chapter 352, O.S.L. 1995 and as last amended by Section 21, Chapter 353, O.S.L. 1996, 1116, as last amended by Section 32, Chapter 352, O.S.L. 1995 and as renumbered by Section 199, Chapter 352, O.S.L. 1995, 1116.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995 and as last amended by Section 23, Chapter 353, O.S.L. 1996, 1403.3, as renumbered by Section 199, Chapter 352, O.S.L. 1995 and as last amended by Section 3, Chapter 3, O.S.L. 1996 and 1130, as last amended by Section 65, Chapter 352, O.S.L. 1995 and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Sections 7003-5.4, 7003-5.5, 7003-5.6, 7004-3.4 and 7006-1.1), which relate to the Oklahoma Childrens Code; giving additional authority to the Department of Human Services; providing for permanency; providing for additional authority of Office of

Advocate General; requiring certain investigations; providing for certain legal guardianships; prohibiting certain actions; requiring full participation of parents in individual treatment and service plans; providing for termination of parental rights; amending Section 2, Chapter 353, O.S.L. 1996, Section 4, Chapter 353, O.S.L. 1996, Section 6, Chapter 353, O.S.L. 1996, Section 8, Chapter 353, O.S.L. 1996, Section 12, Chapter 353, O.S.L. 1996 and Section 13, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Sections 7202, 7204, 7206, 7208, 7212 and 7213), which relate to the Oklahoma Foster Care and Out-of-Home Placement Act; modifying purpose and intent; limiting length of time in out-of-home placement; establishing a toll-free telephone number to report complaints; providing for complaints; requiring records; requiring confidentiality; providing for foster parents' rights and foster parents' responsibilities; requiring certain plans; granting certain foster parents additional rights; requiring training; requiring certain corrective action; requiring certain information for grandparents; requiring certain application for funds; amending 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1), which relates to the Oklahoma Child Care Facilities Licensing Act; requiring conducting of criminal background investigations on certain persons; making exceptions; updating and clarifying language; providing for confidentiality of certain records; providing exceptions; providing

for and authorizing certain penalties; repealing Section 16, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1996, Section 1135), which relates to placement determination and which was a duplicate section; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1116.6, as amended by Section 4, Chapter 72, O.S.L. 1993 (10 O.S. Supp. 1996, Section 1116.6), is amended to read as follows:

Section 1116.6 A. There is hereby created a State Postadjudication Review Advisory Board which shall meet at least twice each calendar year. The Advisory Board shall have the duty of overseeing the implementation of the state ~~foster care~~ postadjudication review program in coordination with the Commission on Children and Youth.

B. The Advisory Board shall consist of ~~eighteen (18)~~ twenty-one (21) members appointed by the Governor~~. At least eight~~ as follows:

1. Eight of the members ~~appointed~~ shall be members of the various review boards throughout the state ~~and at least five~~;

2. Five of the members shall be judges of the district court;

3. One of the members shall be a foster parent to represent foster parents having a current contract with the Department of Human Services for providing foster care services;

4. One of the members shall be a foster parent to represent child-placing agencies having a current contract with the Department for providing foster care services; and

5. One of the members shall be a foster parent nominated by any local or statewide foster parent association.

The members shall serve at the pleasure of the Governor. The administrative heads of the divisions which have foster care responsibilities within the Department of Human Services and the Office of Juvenile Affairs or such persons designated shall serve as ex officio members of the Board.

C. The Director of the Commission on Children and Youth shall be the clerk of the Advisory Board.

The Advisory Board shall have the ~~following duties~~ duty to:

1. ~~To assist~~ Assist in the training of the members of the review boards; ~~and~~

2. ~~To serve~~ Serve, in coordination with the Commission on Children and Youth, as a clearinghouse for reports and information concerning the foster care review program and the review boards as they relate to foster care; ~~and~~

3. ~~To make~~ Make recommendations to the courts, the Commission on Children and Youth, the Governor, the Legislature, the Department of Human Services and the Office of Juvenile Affairs and each agency affected by the report regarding proposed statutory revisions, amendments to court rules and procedures, and services provided by public and private agencies as they relate to foster care; ~~and~~

4. ~~To work~~ Work with both public and private agencies concerned with foster care and adoption exchanges to inform the public of the need for temporary and permanent homes and other services needed by deprived children; and

5. Specifically:

a. identify, analyze, and recommend solutions to any issue concerning child welfare and foster care services within the child welfare system,

b. participate in statewide planning and promote foster parent involvement in local planning concerning children's services,

c. review and make recommendations on foster care and child welfare service delivery policies, guidelines, and procedures,

d. develop recommendations concerning foster care training to improve the quality of foster care services children receive, and

e. review and advise the Department of Human Services and the Office of Juvenile Affairs on pending or enacted legislation, primarily as concerns foster care services and permanency planning, and on the agency's responses or positions regarding that legislation.

D. The Commission on Children and Youth, with the assistance of the Administrative Director of the Courts and the State Postadjudication Review Advisory Board, shall be responsible for developing and administering training procedures and rules for the administration of the ~~State Postadjudication Review Advisory Board System~~ state postadjudication review board system.

E. The Commission on Children and Youth shall include activities of the review boards and a report of the findings and recommendations of the review boards in the annual report required by Section 601.9 of this title.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1115.2, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 21, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7003-5.4), is amended to read as follows:

Section 7003-5.4 A. The court shall ensure that the following information accompanies any deprived child placed outside the child's home:

1. Demographic information;

2. Strengths, needs and general behavior of the child;

3. Circumstances which necessitated placement;

4. Type of custody and previous placement;

5. Pertinent family information including, but not limited to, the names of family members who are and who are not, by court order, allowed to visit the child and the child's relationship to the family which may affect placement;

6. Important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;

7. Whether the child has third-party insurance coverage which may be available to the child;

8. Education history to include present grade placement, last school attended, and special strengths and weaknesses. The Department of Human Services shall also assist the foster parents in getting the foster child's school records and assistance in school admission;

9. Known or available medical history including, but not limited to:

a. allergies,

b. immunizations,

c. childhood diseases,

d. physical handicaps,

e. psycho-social information, and

f. the name of the child's last doctor, if known; and

10. Copies of policies and procedures of the placement agency which pertain to placement operations of the agency, and which may be necessary to properly inform the institution, foster parent or other custodian of the duties, rights and responsibilities of the custodian.

B. When the Department of Human Services places a child in out-of-home care, the Department shall provide the placement providers with sufficient medical information to enable the placement providers to care for the child appropriately. Such medical information shall include, but not be limited to:

1. Any medical or psychological conditions;

2. Diseases, illnesses, accidents, allergies, and congenital defects; and

3. Immunization history.

C. 1. When the Department places a child in out-of-home care, the placement providers may request the Department to provide contagious or infectious screening examinations or tests on the child and provide the results to such placement providers.

2. The Department shall provide for the examinations or tests on the child in accordance with rules promulgated by the Department and based on the Centers for Disease Control guidelines for time and frequency of testing, and shall, for a child, regardless of age, in the Department's emergency or temporary custody, obtain the parental consent or, if parental consent cannot be obtained due to refusal or inability to locate, the Department shall ~~request an order from the district court authorizing~~ have the authority to give consent for such examinations or tests and the release of such results to the placement providers. Any parental consent ~~or judicial authorization~~ received by the Department, pursuant to the provisions of this section, shall also apply to any future examinations or tests and release of such results as deemed necessary by the Department upon the request of the placement providers. The Department has the authority to consent to the examinations or tests and the release of such test results for a child, regardless of age, in the Department's permanent custody.

3. The Department may also designate other persons who may request the performance of such examinations or tests on the child, including but not limited to Department employees, direct caregivers and physicians.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1116, as last amended by Section 32, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7003-5.5), is amended to read as follows:

Section 7003-5.5 A. The following kinds of orders of disposition may be made in respect to wards of the court pursuant to a deprived child proceeding:

1. The court may place the child under supervision by the Department in his own home, or in the custody of a suitable person elsewhere. The court may require the parent or other person to comply with such conditions as the court may require and to give security by bond, with surety or sureties approved by the court, for compliance with such order.

2. If it is consistent with the welfare of the child, the child shall be placed with his parent or legal guardian, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to such deprivation, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from becoming or continuing to be deprived. Such order shall remain in effect for a period of not more than one (1) year to be specified by the court, and the order may be extended or renewed by the court.

3. The court may place the child in the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In placing a child in a private institution or agency, the court shall select one that is licensed by the Department or any other state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the court shall place a child in any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency

shall give to the court such information concerning the child as the court may at any time require.

4. The court may order the child to receive counseling or other community-based services as necessary.

5. The court may place the child in the custody of the Department.

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the deprivation of the child, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

7. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown when in the best interests of the child.

~~8.~~ B. In any dispositional order removing a child from the home of the child, the court shall make a determination as to whether, in accordance with the best interests of the child, reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

~~B.~~ C. 1. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the local school district, the county, the Department or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning

disabilities, mental retardation, and hearing and visual impairments and other impediments which could constitute an educational handicap. The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

2. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from out-of-home care to independent living.

~~C.~~ D. 1. No child who has been adjudicated deprived upon the basis of noncompliance with the mandatory school attendance law alone may be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child.

2. A deprived adjudication based solely upon repeated absence from school shall not constitute a ground for termination of parental rights.

~~D.~~ E. The court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the court terminates the rights of a parent and places the child with an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the court places the child with the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning said child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate upon final decree of adoption.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1116.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last

amended by Section 23, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7003-5.6), is amended to read as follows:

Section 7003-5.6 A. 1. Every disposition order regarding a child adjudicated to be deprived shall be reviewed by the court at least once every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of said parent or parents are terminated and a final adoption decreed.

2. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is returned to the custody of his parents or permanency plan is established. No later than ~~eighteen (18)~~ twelve (12) months after placing a child in out-of-home placement ~~and every twelve (12) months thereafter~~, the court making the original order of adjudication shall conduct a ~~dispositional~~ permanency hearing to consider, in the best interests of the child, whether:

a. the child should be returned to his parents or other family member,

b. the child should be continued in out-of-home placement for a specified period,

c. the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship, or

d. the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.

3. The provisions of this section shall also apply to a child who has been removed from the home of the lawful parent or parents of the child after the child has been returned to that home until such time as the court orders the case closed.

B. The court may set a case for a review hearing upon the motion of a party at any time, if the hearing is deemed by the court to be in the best interests of the child.

C. Notice of review hearings shall be served upon the parties and upon the present foster parent or foster parents entitled to participate pursuant to Section ~~8~~ 7208 this ~~act~~ title, each of whom shall be entitled to participate pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act.

D. In addition, the court shall:

1. Consider fully all relevant prior and current information including, but not limited to, the report or reports submitted pursuant to Sections ~~8~~ 7208 and ~~24~~ 7003-5.6a of this ~~act~~ title;

2. Determine whether the parties have complied with, performed, and completed each and every term and condition of the treatment and service plan which was previously court ordered;

3. Inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional services be provided if necessary to protect the child from further physical, mental, or emotional harm or to correct the conditions that led to the adjudication;

4. Make a determination:

a. as to whether reasonable efforts have been made to provide for the return of the child to the child's own home. If the court finds that reasonable efforts have been made but have failed or are no longer feasible, the court shall make a determination that reasonable efforts are being made to secure an alternate permanent placement for the child, and

b. where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the child in making the transition from foster care to independent living; and

5. Order such modification to the existing service plan, as the court determines to be in the best interests of the child and necessary for the correction of the conditions that lead to the adjudication of the child.

E. If it is determined that the child should be placed for adoption, foster parents ~~may~~ shall be considered eligible to adopt the child.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.6b of Title 10, unless there is created a duplication in numbering, reads as follows:

In determining permanent placement for a child, if the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, the court shall provide for the legal guardianship or long-term foster care of the child. Legal guardianship shall be considered before long-term foster care if it is in the best interest of the child and if a suitable legal guardian can be found. If the child is living with a relative or a foster parent who is willing to provide and capable of providing a stable and permanent environment, but is not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be detrimental to the emotional well-being of the child because the child has substantial psychological ties to the kinship caretaker or foster parents. The proceeding for the appointment of a legal guardian for a child who is in the custody of the Department shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1403.3, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 3, Chapter 3, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7004-3.4), is amended to read as follows:

Section 7004-3.4 A. The Commission for Human Services shall establish and maintain a fair, simple and expeditious system for resolution of grievances of all persons committed to the Department of Human Services regarding the substance or application of any written or unwritten policy or rule of the Department or of an agent or contractor of the Department or any decision, behavior or action by an employee or agent of, contractor with, or other person committed to the Department.

B. The Commission for Human Services is authorized and directed to establish the Office of Advocate Defender within the Department and to employ such personnel as may be necessary to carry out the purposes of subsection A of this section. Such personnel may be dismissed only for cause.

1. The chief administrative officer of the Office of Advocate Defender shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel Administration classification and compensation plan, but shall be an unclassified position.

2. The duties and responsibilities of the Advocate General are as follows:

a. supervise personnel assigned to the Office of Advocate ~~General~~ Defender,

b. monitor and review grievance procedures and hearings, including grievance hearings or procedures pursuant to Section 7213 of this title,

c. investigate grievances of children, foster parents and staff grievances related to children which are not resolved at the facility or local level,

d. investigate allegations of abuse or neglect of children in Department-operated facilities or children who are in the custody of the Department and placed in a private facility,

e. coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations,

f. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Office of Juvenile System Oversight and other appropriate persons as necessary,

g. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances established by the Commission, in the favor of the complainant, and

h. perform such other duties as required by the Director of Human Services.

C. The Department shall promptly and immediately report to the appropriate district attorney having jurisdiction any act or omission by persons employed by the Department, perpetrated, committed or suffered or allowed to be perpetrated or committed by such person or persons upon any child in the custody of the Department, wherever housed, when such act or omission, upon conviction, would constitute a criminal offense. Copies of all such reports shall be forwarded to the Attorney General.

D. The Office of ~~the~~ Advocate ~~General~~ Defender shall investigate allegations of abuse or neglect of a patient in a day treatment program as defined in Section 175.20 of this title, if funds are available. The Advocate General shall file a report of the results of the investigation with the appropriate district attorney having jurisdiction and the State Department of Health.

E. The Office of Advocate Defender shall investigate allegations of any employee of the Department who threatens a foster care parent with removal of a child or who disrupts a child placement as retaliation or penalty towards a foster parent who files a grievance pursuant to Section 7213 of this title. The Office of Advocate Defender shall at all times be granted access to any foster home licensed, authorized or funded by the Department.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 1130, as last amended by Section 65, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7006-1.1), is amended to read as follows:

Section 7006-1.1 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)~~ 4 of subsection B 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 has been adjudicated to be deprived, and

b. such condition is caused by or contributed to by acts or omissions of the 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 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 the parent is fully participating in all aspects of the individual treatment and service plan specified by the provisions of Section 7003-5.3 of this title, and if, in the judgment of the court, such extension of time would be in the best interest of the child. Failure of the parent to fully participate in the treatment and service plan as required shall constitute grounds for termination of parental rights pursuant to the provisions of this paragraph. 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 subsequent child has been born to a parent whose parental rights to other children have been terminated by the court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other children has not been corrected. The court may set the time in which the applicant shall show that the condition has not been corrected, if, in the judgment of the court, it is in the best interests of the

child. Until the applicant shows the condition has not been corrected, the child may remain in the custody of the parent, subject to any conditions which the court may impose, or the court may place the child with an individual or an agency. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney; or

5. 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; provided, that the incarceration of a parent shall not prevent termination of parental rights under this section; or

6. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes, the laws relating to child abuse and neglect, 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

7. 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

8. A finding that all of the following exist:

a. the child has been adjudicated deprived, 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

9. A finding that all of the following exist:

a. the child has been adjudicated deprived, 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 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. An order directing the termination of parental rights is a final appealable order.

C. 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 5 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 8. AMENDATORY Section 2, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7202), is amended to read as follows:

Section 7202. For purposes of the Oklahoma Foster Care and Out-of-Home Placement Act, it is the intent of the Legislature that:

1. Parents have a natural, legal and moral right, as well as a duty, to care for and support their children, and such rights are protected by state and federal laws;

2. The state has an interest in and a responsibility to children whose parents do not adequately provide proper care, supervision and protection for them. When circumstances within a family threaten a child's safety or welfare, or when such circumstances deprive a child of proper parental supervision, the state's interest in the child's welfare and in the protection of the public takes precedence over the natural right and authority of the parent;

3. Parents have a duty and responsibility to take part in any treatment and service plan, or any other order of the court, which will enable the return of a child to the child's home or which will allow a child to remain in the child's own home when the parent is the perpetrator of abuse and neglect;

4. When a child is placed into foster care, such child shall be placed, ~~whenever possible and~~ when the safety and well-being of the child can be assured, with relatives, or other persons having a kinship relationship with the child, who are determined to be suitable to serve as caretakers for the child. For a deprived child, a placement with suitable relatives or other persons having a kinship relationship with the child shall only be made when such placement is in the best interests of the child. For a delinquent child or a child in need of supervision, a placement with suitable relatives or other persons having a kinship relationship with the child shall only be made when such placement is in the best interests of the child and when such placement is consistent with the state's interest in the protection of the public;

5. Each child shall be assured the care, guidance, and supervision in a permanent home which will serve the best interests

of the child's moral, emotional, mental, social, and physical well-being;

6. Permanent placement shall be achieved as soon as possible for every child in out-of-home placement;

7. a. The best interests of the child shall be the standard for recommendations made by the Department of Human Services and the courts for deprived action determinations with regard to whether a child should be reunified with the child's family, should be permanently removed from the home, or should remain in the home in which the child has been abused or neglected.

b. For delinquent children and children in need of supervision, the best interests of the child consistent with the state's interest in the protection of the public shall be the standard for recommendations made by the Department of Juvenile Justice and the courts for determinations with regard to whether a delinquent child or a child in need of supervision should be reunified with the child's family, should be permanently removed from the home, or should remain in the home.

c. It is the intent of the Legislature that a child not be in out-of-home placement for longer than twelve (12) months without a determination of the permanent placement for the child;

8. The goal of reunification of a child who has been adjudicated deprived with the parents or any other person responsible for the child's welfare shall be abandoned when~~, after a reasonable period of time,~~ there is sufficient evidence that the conduct of the parents toward the child, or the conduct of the parents during the child's out-of-home placement, including, but not

limited to, compliance with a treatment and service plan or court order, is determined not to be in the child's best interests, and abandonment of such goal is determined to be in the child's best interests. In such cases, the district attorney and the court shall provide for termination of parental rights in an expeditious manner if the grounds, situations or conditions exist to support termination of parental rights and the child is otherwise available for adoption;

9. Foster parents have a limited but recognizable interest in the familial relationship they have established with a foster child who has been in their care and custody, and shall therefore be construed to be essential participants with regard to decisions related to the the growth, development, care, protection and treatment of such children; and

10. When two or more children in foster care are siblings, every reasonable attempt should be made to place them in the same home. In making a permanent placement, such children should be placed in the same permanent home or, if the siblings are separated, should be allowed contact or visitation with other siblings; provided, however, the best interests of each sibling shall be the standard for determining whether they should be placed in the same foster placement or permanent placement, or allowed contact or visitation with other siblings.

SECTION 9. AMENDATORY Section 4, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7204), is amended to read as follows:

Section 7204. A. The Department of Human Services and the Department of Juvenile Justice shall each establish a program of foster care for children in the custody of the state agency.

B. Each Department, in implementing the foster care program within its jurisdictional area, shall:

1. Recruit foster families for children in the custody of the state agency;

2. Contract with foster parents and child-placing agencies to provide foster care services to children within the custody of the state agency;

3. Exercise supervision over all foster placements with whom the state agency has a contract;

4. Advise and cooperate with the governing boards of all child-placing agencies and with foster parents;

5. Assist the staff of all child-placing agencies, foster parents and foster families by advising them on methods and procedures relating to child care and improvement of services;

6. Establish rules and standards for providing foster care services in addition to those required by the Oklahoma Child Care Facilities Licensing Act;

7. Require initial and ongoing foster parent training and education programs;

8. Provide foster parents with a statewide, toll-free telephone number pursuant to Section 10 of this act;

9. Cooperate, collaborate and assist ~~postadjudicatory~~ postadjudication review boards in the review of the placement of each child in foster care in order to achieve the goals in the treatment and service plan required for each child by ~~Title 10 of the Oklahoma Statutes~~ this title;

~~9.~~ 10. Provide for insurance coverage pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act;

~~10.~~ 11. Provide for collection, through assignment, attachment, garnishment, liens, or other legal process, of the cost for out-of-home placement services provided through the state agency from the parents, guardian, or other person responsible for the care and support of a child in the custody of the state agency;

~~11.~~ 12. Cooperate with and help promote foster parent associations. The state agency shall provide foster parent associations with data, information and guidelines on the obligations, responsibilities and opportunities of foster parenting and shall keep the associations and members apprised of changes in laws and rules relevant to foster parenting;

~~12.~~ 13. Through the individualized service planning process, develop a permanency plan for each child in custody who is placed in foster care with the goal of placement of the child in a home environment that can be reasonably expected to be stable and permanent; and

~~13.~~ 14. Exercise and perform such other acts as may be necessary to implement the Oklahoma Foster Care and Out-of-Home Placement Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7204.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. 1. There shall be a statewide, toll-free telephone number for foster parents to report to the Office of Advocate Defender of the Department of Human Services suspected misconduct, malfeasance, misfeasance, or violations of rules, procedures, or laws by Department employees, service providers, or contractors that is detrimental to the best interest of children receiving foster care, foster care services, or training from the Department.

2. A reporter shall not be relieved of his duty to report incidents pursuant to the Oklahoma Child Abuse Reporting and Prevention Act.

3. The Advocate General shall establish rules and procedures for evaluating reports of suspected misconduct and violation of rules and for conducting an investigation of such reports.

B. 1. The Office of Advocate Defender shall prepare and maintain written records from the reporting source that shall

contain the following information to the extent known at the time the report is made:

a. the names and addresses of the child and the person responsible for the child's welfare,

b. the nature of the misconduct and the detriment cause to the child's best interest, and

c. the names of the persons or agencies responsible for the alleged misconduct.

Any investigation conducted by the Office of Advocate Defender pursuant to such information shall not duplicate and shall be separate from the investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act.

2. At the request of the reporter, the Office of Advocate Defender shall keep the identity of the reporter strictly confidential from the operation of the Department, until the Advocate General determines what recommendations shall be made with regard to discipline or sanction of the Department employee, service provider, or contractor, with the exception of suspected child abuse or neglect which shall be handled consistent with the Oklahoma Child Abuse Reporting and Prevention Act.

C. The Department shall take whatever steps are necessary to assure that a person making a report in good faith under this section is not adversely affected solely on the basis of having made such report.

SECTION 11. AMENDATORY Section 6, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7206), is amended to read as follows:

Section 7206. A. The Department of Human Services, the Department of Juvenile Justice or any child-placing agency shall, prior to placement in foster placement, enter into a written agreement with the foster care placement provider. The agreement shall provide, at a minimum:

1. That the state agency and the child-placing agency shall have access at all times to the child and to the foster placement;

2. A listing of any specific requirements, specific duties or restrictions in providing foster care services;

3. That any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child's attorney;

4. That the foster care placement provider shall comply with performance standards required pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act, the Oklahoma Children's Code, the Juvenile Justice Code, and the Oklahoma Child Care Facilities Licensing Act;

5. For the amount of payments to be made for foster care services;

6. That any foster child placed with a foster care placement provider will be released to the state agency or the child-placing agency whenever, in the opinion of the state agency or the child-placing agency, the best interests of the deprived child require such release, or the best interests of the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public, require such release pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act; and

7. Such other information required by the state agency and the child-placing agency.

B. The state agency shall provide the following information to the foster parents, along with a copy of the written agreement required pursuant to subsection A of this section:

1. The name, title, and telephone number of the case worker, the case worker's supervisor, and the contact within the state agency central office, or the name of the contact person within the child-placing agency;

2. A copy of the grievance procedure established by the state agency or the child-placing agency pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act;

3. The name and telephone number of any foster parent association in the county of residence of the foster parent;

4. For foster parents of deprived children, the name and telephone number of any ~~postadjudicatory~~ postadjudication review board established in the county of residence of the foster parent or the nearest ~~postadjudicatory~~ postadjudication review board; ~~and~~

5. A copy of foster parent rights and a copy of foster parent responsibilities; and

6. ~~Information~~ Notification of court review dates along with information detailing the foster parents' ability to submit written reports to the court, or to petition the court directly for review of a decision by the state agency or the child-placing agency to remove a foster child who has been placed with the foster parent, in accordance with the limitations and requirements of Section 8 of this act.

C. 1. In addition to other requirements made pursuant to the Oklahoma Child Care Facilities Licensing Act, each child-placing agency shall maintain supervision of all children placed by the agency in foster placement and shall maintain supervision of and make regular visits to such foster placements.

2. The child-placing agency shall visit each foster placement no less than once every month.

3. The child-placing agency shall prepare and maintain a written report of its findings for each visit.

4. a. A complete written review of the placement, well-being and progress of any foster child in foster care with a child-placing agency shall be made by the child-placing agency as required by the state agency with which the child-placing agency has a contract.

b. If a child-placing agency is providing foster care services for a child pursuant to a written agreement or contract with the parents or guardian of a child, the child-placing agency shall provide a copy of the written review to the parents or guardian of the child. The written agreement or contract shall specify how often the review shall be conducted.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7206.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A foster parent's rights include, but are not limited to, the following:

1. The right to be treated with dignity, respect, and consideration as a professional member of the child welfare team;

2. The right to be given standardized pre-service training and appropriate ongoing training to meet mutually assessed needs and improve the foster parent's skills;

3. The right to be informed as to how to contact the appropriate child placement agency in order to receive information and assistance to access supportive services for children in the foster parent's care;

4. The right to receive timely financial reimbursement commensurate with the care needs of the child as specified in the service plan;

5. The right to be provided a clear, written understanding of a placement agency's plan concerning the placement of a child in the foster parent's home. Inherent in this right is the foster parent's responsibility to support activities that will promote the child's right to relationships with his or her own family and cultural heritage;

6. The right to be provided a fair, timely, and impartial investigation of complaints concerning the foster parent's

licensure, to be provided the opportunity to have a person of the foster parent's choosing present during the investigation, and to be provided due process during the investigation; the right to be provided the opportunity to request and receive mediation or an administrative review of decisions that affect licensing parameters, or both mediation and an administrative review; and the right to have decisions concerning a licensing corrective action plan specifically explained and tied to the licensing standards violated;

7. The right, at any time during which a child is placed with the foster parent, to receive additional or necessary information that is relevant to the care of the child;

8. The right to be notified of scheduled meetings and staffings concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child, including individual service planning meetings, administrative case reviews, interdisciplinary staffings, and individual educational planning meetings; the right to be informed of decisions made by the courts or the child welfare agency concerning the child; the right to provide input concerning the plan of services for the child and to have that input given full consideration in the same manner as information presented by any other professional on the team; and the right to communicate with other professionals who work with the foster child within the context of the team, including therapists, physicians, and teachers;

9. The right to be given, in a timely and consistent manner, any information a case worker has regarding the child and the child's family which is pertinent to the care and needs of the child and to the making of a permanency plan for the child. Disclosure of information concerning the child's family shall be limited to that information that is essential for understanding the needs of and providing care to the child in order to protect the rights of the child's family. When a positive relationship exists between the

foster parent and the child's family, the child's family may consent to disclosure of additional information;

10. The right to be given reasonable written notice of:

a. any change in a child's case plan,

b. plans to terminate the placement of the child with the foster parent, and

c. the reasons for the change or termination in placement. The notice shall be waived only in cases of a court order or when the child is determined to be at imminent risk of harm;

11. The right to be notified in a timely and complete manner of all court hearings, including notice of the date and time of the court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case; and the right to intervene in court proceedings pursuant to Section 15 of this act;

12. The right to be considered as a preferred placement option when a foster child who was formerly placed with the foster parent is to be re-entered into foster care, if that placement is consistent with the best interest of the child and other children in the foster parent's home;

13. The right to have timely access to the child placement agency's existing appeals process and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal; and

14. The right to be informed of the Foster Parent Hotline established under Section 10 of this act and all of the rights accorded to foster parents concerning reports of misconduct by Department employees, service providers, or contractors, confidential handling of those reports, and investigation by the Office of Advocate Defender.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7206.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A foster parent's responsibilities include, but are not limited to, the following:

1. The responsibility to openly communicate and share information about the child with other members of the child welfare team;

2. The responsibility to respect the confidentiality of information concerning foster children and their families and act appropriately within applicable confidentiality laws and rules;

3. The responsibility to advocate for children in the foster parent's care;

4. The responsibility to treat children in the foster parent's care and the children's families with dignity, respect, and consideration;

5. The responsibility to recognize the foster parent's own individual and familial strengths and limitations when deciding whether to accept a child into care; and the responsibility to recognize the foster parent's own support needs and utilize appropriate supports in providing care for foster children;

6. The responsibility to be aware of the benefits of relying on and affiliating with other foster parents and foster parent associations in improving the quality of care and service to children and families;

7. The responsibility to assess the foster parent's ongoing individual training needs and take action to meet those needs;

8. The responsibility to develop and assist in implementing strategies to prevent placement disruptions, recognizing the traumatic impact of placement disruptions on a foster child and all members of the foster family; and the responsibility to provide emotional support for the foster children and members of the foster

family if preventive strategies fail and placement disruptions occur;

9. The responsibility to know the impact foster parenting has on individuals and family relationships; and the responsibility to endeavor to minimize, as much as possible, any stress that results from foster parenting;

10. The responsibility to know the rewards and benefits to children, parents, families, and society that come from foster parenting and to promote the foster parenting experience in a positive way;

11. The responsibility to know the roles, rights, and responsibilities of foster parents, other professionals in the child welfare system, the foster child, and the foster child's own family;

12. The responsibility to know and, as necessary, fulfill the foster parent's responsibility to serve as a reporter of suspected child abuse or neglect pursuant to the Oklahoma Child Abuse Reporting and Prevention Act; and the responsibility to know the child welfare agency's policy regarding allegations that foster parents have committed child abuse or neglect and applicable administrative rules and procedures governing investigations of those allegations;

13. The responsibility to know and receive training regarding the purpose of administrative case reviews, client service plans, and court processes, as well as any filing or time requirements associated with those proceedings; and the responsibility to actively participate in the foster parent's designated role in these proceedings;

14. The responsibility to know the child welfare agency's appeal procedure for foster parents and the rights of foster parents under the procedure;

15. The responsibility to know and understand the importance of maintaining accurate and relevant records regarding the child's

history and progress; and the responsibility to be aware of and follow the procedures and regulations of the child welfare agency with which the foster parent is licensed or affiliated;

16. The responsibility to share information, through the child welfare team, with the subsequent caregiver, whether the child's parent or another substitute caregiver, regarding the child's adjustment in the foster parent's home; and

17. The responsibility to provide care and services that are respectful of and responsive to the child's cultural needs and are supportive of the relationship between the child and his or her own family; the responsibility to recognize the increased importance of maintaining a child's cultural identity when the race or culture of the foster family differs from that of the foster child; and the responsibility to take action to address these issues.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7206.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services, the Office of Juvenile Justice, and agencies providing foster care services under contract with the Department, are responsible for implementing this law.

B. The Department and each agency providing foster care services under contract with the state agency, shall prepare an annual plan for implementing Sections 12 and 13 of this act. The plans shall be prepared by January 1 of 1998 and each year thereafter and shall be submitted for public review and comment. The plans shall be reviewed, approved, and monitored by the State Postadjudication Review Advisory Board under rules adopted by the Department.

C. Nothing in Sections 12 and 13 of this act shall be construed to create a private right of action or claim on the part of any individual or the Department of Human Services and the Office of Juvenile Justice.

SECTION 15. AMENDATORY Section 8, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7208), is amended to read as follows:

Section 7208. A. In making placements in foster care, the Department of Human Services, the Department of Juvenile Justice and any child-placing agency shall, if possible, arrange for a preplacement visit for the child with the persons who will be providing foster care.

B. If a child placed in the custody of a child-placing agency <u>or in the custody of a state agency</u> by the court has resided with a foster parent for three (3) or more months:

1. Except in an emergency, the state agency or child-placing agency shall:

a. give a minimum of five (5) days' advance notice to the foster care family before removing a child from their care, and

b. at the time of such notification, provide the foster family with a written statement of the reasons for removing a child; and

2. The foster parent shall be entitled to submit to the court written reports or present testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to such other information the court may request.

C. When a child, under the jurisdiction of a court pursuant to the Oklahoma Children's Code, is placed in the custody of the Department of Human Services, or a child, under the jurisdiction of a court pursuant to the Juvenile Justice Code is placed in the custody of the Department of Juvenile Justice, or is placed in the custody of any child-placing agency, the state agency or child-placing agency shall have discretion to determine an appropriate foster placement for the child. Except as provided in this section, the state agency or child-placing agency may remove a child in its

custody from a foster placement whenever the state agency or child-placing agency determines that removal is in the best interests of the deprived child, or the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public.

D. 1. In order to promote stability for foster children and limit repeated movement of such children from one foster placement to another, the state agency or child-placing agency, except as otherwise provided by this subsection, shall not change the foster home placement of a child without the approval of the court in the following circumstances:

a. the child has been moved once since the last court hearing, as provided in Section ~~22~~ 7003-5.4a of this ~~act~~ title, and

b. a foster parent with whom the child has resided for more than ~~one (1) year~~ six (6) months objects, in writing pursuant to the provisions of this subsection, after notice of the removal of the child by the state agency or the child-placing agency.

2. The objection shall be filed with the court by the foster parent and served on the state agency or child-placing agency within five (5) working days after receipt of the notice from the state agency or child-placing agency regarding removal of the child. The court shall provide for notice to other parties in the case.

3. Timely filing and service of the objection shall stay removal of the child pending review of the court unless the state agency's or child-placing agency's stated reason for removal is:

a. substantial noncompliance by the foster parent with applicable foster family home standards and agreements,

b. pending investigation of allegations of abuse or neglect of the child by a foster parent or other person residing in the foster family home, or

c. reunification with a parent that contributed to the child being deprived, with the prior approval of the court.

4. The court shall conduct a hearing within fifteen (15) working days on any objection filed pursuant to this section. The court may order that the child remain in or be returned to the objecting foster parent's home if the court finds that the Department of Human Services or child-placing agency's decision to remove the child was arbitrary or was inconsistent with the child's treatment and service plan.

SECTION 16. AMENDATORY Section 12, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7212), is amended to read as follows:

Section 7212. A. The Department of Human Services, the Department of Juvenile Justice and each child-placing agency shall develop a foster care education program to provide training for persons intending to furnish foster care services and continuing educational programs for foster parents.

B. In addition to any other conditions and requirements specified by the state agency or child-placing agency, as applicable, prior to placement of a child in foster placement other than kinship care, each foster parent shall have completed the training approved by the Department of Human Services, the Department of Juvenile Justice or the child-placing agency, as appropriate. <u>Foster parents providing kinship care shall be required to complete the training required for foster parents prior to placement, if possible, but in no event not later than three (3) months after placement of the child with such foster parents.</u> Approved training shall require a minimum of twelve (12) hours of

study related, but not limited, to physical care, education, learning disabilities, procedures for referral to and receipt of necessary professional services, behavioral assessment and modification, independent-living skills, and procedures for biological parent contact. The foster parent or person intending to provide foster care services may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas.

C. Foster parent training programs may include, but need not be limited to, in-service training, workshops and seminars developed by the state agency; seminars and courses offered through public or private education agencies; and workshops, seminars and courses pertaining to behavioral and developmental disabilities and to the development of mutual support services for foster parents.

SECTION 17. AMENDATORY Section 13, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7213), is amended to read as follows:

Section 7213. A. The Department of Human Services, the Department of Juvenile Justice and child-placing agencies shall each establish grievance procedures for foster parents with whom such state agencies or child-placing agencies contract.

B. The procedures for foster parents established by each state agency and child-placing agency shall contain the following minimum requirements:

1. Resolution of disputes with foster parents shall be accomplished quickly, informally and at the lowest possible level, but shall provide for access to impartial arbitration by management level personnel within the central office; and

2. Prompt resolution of grievances within established time frames.

C. Each state agency and child-placing agency shall designate an employee to receive and process foster care grievances.

D. Each state agency and child-placing agency shall maintain records of each grievance filed as well as summary information about the number, nature and outcome of all grievances filed. Agencies shall keep records of grievances separate and apart from other foster parent files. A foster parent or a former foster parent shall have a right of access to the grievance record of grievances such person filed after the grievance procedure has been completed.

E. Each foster parent shall have the right, without fear of reprisal or discrimination, to present grievances with respect to the providing of foster care services. The Department shall promptly initiate a plan of corrective discipline, including dismissal, of any agency employee who threatens a foster parent with removal of a child or disrupts a child's placement as retaliation or penalty towards a foster parent who files a grievance pursuant to the provisions of this section.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7220 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature finds and declares the following:

1. An increasing number of children under the age of eighteen (18), including many children who would otherwise be at risk of abuse or neglect, are in the care of a grandparent;

2. The principal causes of this increase parental substance abuse, child abuse, mental illness, poverty, and death, as well as concerted efforts by families and by the child welfare service system to keep children with relatives whenever possible;

3. Grandparents providing primary care for at-risk children may experience unique resultant problems, such as financial stress due to limited incomes, emotional difficulties dealing with the loss of the child's parents or the child's unique behaviors, and decreased

physical stamina coupled with a much higher incidence of chronic illness;

4. Many children being raised by grandparents experience one or a combination of emotional, behavioral, psychological, academic, or medical problems, especially those born to a substance-abusing mother or who are at risk of child abuse, neglect, or abandonment; and

5. Grandparents providing primary care for children lack appropriate information about the issues of kinship care, the special needs, both physical and psychological, of children born to a substance-abusing mother or who are at risk of child abuse, neglect, or abandonment, and the support resources currently available to them.

B. The Department of Human Services shall establish an informational and educational program for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing mothers. As a part of the program, the Department shall develop, publish, and distribute an informational brochure for grandparents who provide primary care for children who are at risk of child abuse, neglect, or abandonment or who were born to substance-abusing mothers. The information provided under the program authorized by this section may include, but is not limited to, the following:

1. The problems experienced by children being raised by grandparents;

2. The problems experienced by grandparents providing primary care for children who have special needs;

3. The legal system as it relates to children and grandparents;

4. The benefits available to children and grandparents providing primary care; and

5. A list of support groups and resources located throughout the state.

The brochure may be distributed through hospitals, public health nurses, child protective services, medial professional offices, elementary and secondary schools, senior citizen centers, public libraries, and community action agencies selected by the Department.

SECTION 19. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1), is amended to read as follows:

Section 404.1 A. 1. The Department of Human Services shall require a criminal background investigation for any person making an application for the establishment and operation of a child care facility prior to the issuance of a license certification or any other authorization for contract to operate the facility.

2. a. Every ~~owner or administrator of a~~ child care facility shall arrange, prior to employment, for a criminal ~~history~~ background investigation to be conducted by the Oklahoma State Bureau of Investigation for ~~an applicant for employment and~~ any person to be employed with the child care facility.

b. In addition, any child care facility located in a private residence shall arrange for a criminal background investigation for any adult residing in ~~a~~ the child care facility ~~that is licensed or approved by a child-placing agency and located in a private residence~~. A criminal background investigation conducted by the Oklahoma State Bureau of Investigation shall be completed for any adult who moves into the residence at a later date.

3. a. Any such child care facility contracting with any person for any child care services or to provide services in any manner for the care and supervision of children shall also, prior to executing the contract, arrange for a criminal background investigation

conducted by the Oklahoma State Bureau of Investigation for the person to be providing the services.

b. In addition, any child care facility contracting for child care services which will be provided in a private residence shall arrange for a criminal background investigation for any adult residing in the private residence. A criminal background investigation conducted by the Oklahoma State Bureau of Investigation shall be completed for any adult who moves into the residence at a later date.

4. If the applicant intending to establish or operate a child care facility, the applicant for employment, the employee of the child care facility, the person contracting to provide child care services or the person residing in the child care facility has resided in Oklahoma for less than one (1) year, the criminal background investigation shall be obtained from the previous state of residence.

~~If the applicant for employment or resident has resided in Oklahoma for less than one (1) year, the criminal history investigation shall be obtained from the previous state of residence.~~

B. Prior to the placement of any child in the custody of the Department of Human Services in a foster care home, the Department shall arrange for a criminal background investigation, conducted by the Oklahoma State Bureau of Investigation, for a foster family applicant and for any adult residing in such foster family home. A criminal background investigation, conducted by the Oklahoma State Bureau of Investigation, shall be completed for any adult who moves into the residence at a later date.

C. 1. Adults not required to obtain a criminal ~~history~~ background investigation are:

a. parent volunteers who transport children on an irregular basis, and

b. a child ~~of a foster, adoptive, group or family child care home~~ who became an adult during continuous residence at the licensed ~~facility~~ or approved child care facilities.

2. ~~These exemptions~~ The provisions of this subsection shall not preclude the Department or any child care facility from requesting a criminal ~~history~~ background investigation for, or investigating criminal, abusive or harmful behavior by, any adults employed by or residing in the home, if warranted.

~~3. Prior to the acceptance of a foster family home for placement of any child in the custody of the Department of Human Services, the Department shall arrange for a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, for a foster family applicant and for any adult residing in such foster family home. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall be done for any adult who moves into the residence at a later time.~~

~~4.~~ D. The Department of Human Services shall promulgate rules to identify circumstances when a criminal ~~history~~ background investigation of ~~a foster family~~ an applicant ~~and~~, contractor, employee or of any adult residing in ~~such foster family home~~ the child care facility shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation.

~~C.~~ E. A conviction for a crime shall not be an absolute bar to employment, except as provided in subsection ~~F~~ H of this section, but shall be considered in relation to specific employment duties and responsibilities.

~~D.~~ F. 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained

in a confidential manner ~~in a file that is separate from employment records. The information may be transmitted to the Department for child care facility licensing purposes.~~

~~2. Whenever an applicant is subsequently employed by the owner or administrator of a child care facility, the~~. Any information received pursuant to a criminal ~~history~~ background investigation shall not be made a part of that ~~individual's~~ person's personnel or contract records. ~~Such~~ However, such information, along with any other information relevant to the ~~individual's~~ person's ability to perform tasks that require direct contact with children, may be released to the Department of Human Services or to another child care facility in response to a request from ~~an owner or administrator of a~~ the Department or that child care facility ~~who~~ which is considering employing or contracting with the ~~individual~~ person.

~~3.~~ 2. Requirements for confidentiality and record keeping with regard to the information shall be the same for the ~~owner or administrator~~ child care facility receiving the information in response to a request as those provided for in paragraph 1 of this subsection for the ~~owner or administrator~~ child care facility releasing such information.

~~E. 1.~~ G. A criminal ~~history~~ background investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

~~2.~~ H. 1. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility ~~and for any~~. Upon a determination by the Department of any violation of the provisions of this paragraph by a person required to register pursuant to the Sex Offenders Registration Act, the

Department shall refer such person for prosecution by the district attorney.

2. a. ~~employer who offers or provides services to children to~~ No child care facility shall knowingly and willfully employ or contract with, or allow continued employment of or contracting with, any person who is required to register pursuant to the Sex Offenders Registration Act.

b. Upon a determination by the Department of any violation of the provisions of this ~~section, the violator shall be subject to an administrative fine~~ paragraph by a child care facility, the Department may pursue:

(1) an emergency order,

(2) a license revocation, denial or nonrenewal,

(3) injunctive proceedings,

(4) administrative penalties in an amount not to exceed One Thousand Dollars ($1,000.00), or

(5) the initiation of criminal proceedings.

c. In addition, the violator may be liable for civil damages.

SECTION 20. REPEALER Section 16, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1996, Section 1135), is hereby repealed.

SECTION 21. This act shall become effective November 1, 1997.

46-1-5284 KSM