

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2544

By: Seikel

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 19, Chapter 386, O.S.L. 1997, Section 9, Chapter 352, O.S.L. 1995, 1109, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 4, Chapter 386, O.S.L. 1997, 1116, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 389, O.S.L. 1997, 1116.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 6, Chapter 389, O.S.L. 1997, Section 24, Chapter 353, O.S.L. 1996, 1404, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 386, O.S.L. 1997, 1130, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 389, O.S.L. 1997, 1131, as amended by Section 66, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995, and 1134, as amended by Section 69, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Sections 7001-1.3, 7003-1.1, 7003-3.7,

7003-5.5, 7003-5.6, 7003-5.6a, 7004-1.1, 7006-1.1, 7006-1.2 and 7006-1.5), which relate to the Oklahoma Children's Code; amending 10 O.S. 1991, Sections 26, 27, 28, 29, 32, and 38, which relate to foster care and relinquishment; amending Section 12, Chapter 353, O.S.L. 1995, as amended by Section 14, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7112) and 44 O.S. 1991, Section 47, as amended by Section 1, Chapter 121, O.S.L. 1993 (44 O.S. Supp. 1997, Section 47), which relate to the temporary relinquishments of a child for purposes of military service; modifying and adding terms; making certain terms used in other acts have same meaning; prohibiting certain persons; accepting and placing a child for temporary or permanent relinquishment; providing exceptions; providing for temporary and permanent relinquishments; providing for procedures; providing for eligible persons and entities; requiring certain form for temporary relinquishments to certain persons; protecting rights of certain persons; providing who may execute relinquishments; providing for payment of child support obligations; providing for notification and investigation of child abuse reports; providing for duties of guardian ad litem; providing for reimbursement of certain attorneys; providing for application of section; adding and clarifying authority of court relating to placement of children; setting time limitations for court-ordered services; authorizing extension; requiring notification to parents; providing situations when reunification services need not be

provided to a parent; requiring certain permanency hearings; providing for certain services for incarcerated or institutionalized persons; requiring certain assessments; providing for contents; requiring dispositional hearings; providing for certain determinations; providing criteria for foster parent adoptions; requiring submission of certain reports; requiring certain actions; providing for contents of permanency reports; providing for voluntary placement of a child with the Department of Human Services; providing conditions and restrictions; providing for rules; adding and clarifying grounds for termination of parental rights; providing for construction of section; updating language; providing persons or entities who may place a child in foster care; providing for codification; providing for recodification; repealing 10 O.S. 1991, Sections 25, 30, and 31, which relate to foster care and placement of children; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 19, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7001-1.3), is amended to read as follows:

Section 7001-1.3 A. When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Section

7003-3.1 et seq. of this title are supported by the evidence and whether a child should be adjudged to be a ward of the court;

2. "Child" means any person under eighteen (18) years of age except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

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

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

5. "Child-placing agency" means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements; and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act;

6. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

7. "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the court to serve as an officer of the court and represent any child ~~wherein a juvenile petition has been filed~~ over whom the district court exercises jurisdiction, based on the availability of volunteers, until discharged by the court. Priority shall be given to cases whenever a juvenile petition has been filed. It shall be the duty and responsibility of the court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement. A court-appointed special advocate shall not have any financial responsibility in any matter relating to a child represented by the court-appointed special advocate;

8. "Day treatment" means a nonresidential program which provides intensive services to children who reside in their own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

9. "Department" means the Department of Human Services;

10. a. "Deprived child" means a child:

(1) who is for any reason destitute, homeless, or abandoned,

(2) who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, abuse, cruelty, or depravity on the part of the child's parents, legal guardian, or other person responsible for the child's health or welfare,

(3) who is a child in need of special care and treatment because of his physical or mental condition including, but not limited to, a child

born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment,

(4) who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,

(5) who is, due to improper parental care and guardianship, absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if said child is subject to compulsory school attendance, or

(6) whose parent or legal custodian for good cause desires to be relieved of custody.

b. (1) Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or

religious denomination, for the treatment or cure of disease or remedial care of such child.

- (2) Nothing contained in this subparagraph shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

The phrase "dependent and neglected" shall be deemed to mean deprived;

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

12. "Emergency custody" means court-ordered custody of a child prior to adjudication of the child;

13. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children;

14. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child, in foster placement, while the child needs foster care;

15. "Foster child" means a child placed in foster placement;

16. "Foster family" means all persons living in a foster family home, other than a foster child;

17. "Foster family home" means the private residence of a family which provides foster care services to a child. Such term shall include a foster family home, a therapeutic foster family home, the home of a relative, or a kinship care home;

18. "Foster parent" means any individual maintaining a foster family home, who is responsible for the care of a foster child;

19. "Foster placement" means a child-placing agency or foster family home providing foster care services;

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

21. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, minimal direct staff supervision, and supportive services to assist with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

22. "Institution" means a residential facility offering care and treatment for more than twenty residents;

23. "Investigation" means a mandatory preadjudicatory process by the Department to determine the safety of a child and to make a recommendation to the district attorney as to whether a petition should be filed alleging a child to be a deprived child or whether other nonadjudicatory alternatives are available;

24. "Kinship care" means full-time care of a child by relatives, members of the relative's clan, stepparents, or other adults who have an existing bond with the child and to whom have been ascribed a family relationship role with the child's parents and the child;

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

26. "Multidisciplinary personnel" means any team of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of child physical and sexual abuse cases and who are qualified to facilitate a broad range of interventions and services related to child abuse;

27. "Out-of-home placement" means a placement, other than a placement in the home of the parent or guardian from whose custody the court has removed the child, until the child is reunified with the child's parents;

28. "Permanent relinquishment" means the voluntary surrender of the physical custody and the legal rights of a parent or guardian to a child by a child's parent or guardian, for purposes of the child's adoption, to a child-placing agency, the Department of Human Services, or any person with the assent of the court;

29. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

~~29.~~ 30. "Preliminary inquiry" means an assessment and determination as to whether there is sufficient information to proceed with an investigation of abuse or neglect of a child or an investigation of failure to protect by the person responsible for the child when there are allegations of abuse or neglect;

~~30.~~ 31. "Permanent custody" means court-ordered custody of an adjudicated deprived child whose parental rights have been terminated;

~~31.~~ 32. "Protective custody" means custody of a child taken pursuant to Section 7003-2.1 et seq. of this title;

~~32.~~ 33. "Relative" means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child within the fourth degree of consanguinity;

~~33.~~ 34. "Residential child care center" means a twenty-four-hours-a-day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents;

~~34.~~ 35. "Responsible adult" for purposes of the release of a child from protective custody, means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in another person's absence who is eighteen (18) years of age or older;

~~35.~~ 36. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

~~36.~~ 37. "Temporary relinquishment" means the voluntary surrender of the rights of a parent or guardian with respect to a child, including legal and physical custody of the child, to a child-placing agency, the Department of Human Services, a relative of the child by blood within the third degree, or any other person with the assent of the court by a child's parent or guardian;

38. "Therapeutic foster home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

~~37.~~ 39. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juvenile delinquents;

~~38.~~ 40. "Temporary custody" means court-ordered custody of an adjudicated deprived child or the out-of-home placement of a child

by a parent of a child in foster care for a period not to exceed that authorized by the Oklahoma Children's Code;

~~39.~~ 41. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

~~40.~~ 42. "Treatment and service plan" means a written document which includes at least the following:

- a. a description of the type of home or facility in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child, and
- b. a plan for assuring that the child receives proper care and that services are provided to the parents, child, and placement providers in order to improve the conditions in the parents' home, facilitate return of the child to the child's own home or to an alternate permanent placement, and address the needs of the child while in out-of-home care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

B. Unless the context otherwise requires, the terms defined by the Oklahoma Child Abuse Reporting and Prevention Act and the Oklahoma Foster Care and Out-of-Home Placement Act shall have the same meaning when used in the Oklahoma Children's Code.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 26, is amended to read as follows:

Section 26. No person, other than the parents, or ~~relatives~~ persons related to the child by blood within the ~~fourth~~ third degree, ~~of the child concerned,~~ may ~~assume~~ accept the ~~permanent care and custody of~~ temporary relinquishment of the rights of a parent to a child except in accordance with the provisions of ~~this act~~ the Oklahoma Children's Code, or in accordance with the decree of a court of competent jurisdiction.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 27, is amended to read as follows:

Section 27. ~~No~~ As authorized by this article, no person may ~~assign, permanently or temporarily~~ relinquish, ~~or otherwise transfer to another his~~ the parental rights ~~or duties with respect to the permanent care or custody of~~ a child, except to the parents, or to the relatives of the child by blood within the ~~fourth~~ third degree, ~~of the child concerned,~~ unless specifically authorized or required so to do by an order or judgment of a court of competent jurisdiction or unless by a relinquishment executed in writing in accordance with the provisions of ~~this act~~ article or ~~of~~ pursuant to Section 47 of Title 44 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 28, is amended to read as follows:

Section 28. ~~Relinquishments~~ A. Temporary relinquishments, except as otherwise provided by subsection B of this section, may be made only to:

1. The Department of Human Services;
2. Adult blood relatives of a child for purposes of and in compliance with the provisions of Section 47 of the Title 44 of the Oklahoma Statutes; and
3. Any other person with the written assent of the Department or a court of competent jurisdiction.

B. 1. A person may temporarily relinquish the parental rights to a child, to a relative of the child within the third degree pursuant to this subsection. The temporary relinquishment shall:

- a. be in writing,
- b. clearly identify the child, the person to whom custody is being relinquished, that person's relationship to the child, and whether the relinquishment is permanent or temporary,
- c. be executed by the parent before a notary public, and
- d. clearly state that it is for all purposes, including, but not limited to, health care.

2. Nothing in this section shall terminate, interfere, delay or negate any right of visitation by the noncustodial parent, or any person granted visitation by court order.

C. Permanent relinquishments may be made only to:

~~(1) the 1. The Department of Human Services, and shall be executed in writing before the court;~~

~~(2) a 2. A child-placing agency duly licensed or recognized under the provisions of Section 402 of this title pursuant to the Oklahoma Adoption Code; or~~

~~(3) any 3. Any other person, with the written assent of the Department or court.~~

SECTION 5. AMENDATORY 10 O.S. 1991, Section 29, is amended to read as follows:

Section 29. ~~Relinquishments~~ A. Permanent relinquishments may be executed by a person whose consent to an adoption of a child is required by the Oklahoma Adoption Code.

B. Temporary relinquishments may be executed by:

~~(1) the 1. The parents of a child;~~

~~(2) one parent alone, if~~

~~(a) the other parent consents thereto in writing; or~~

~~(b) the other parent is dead; or~~

~~(c) the other parent has been adjudicated incompetent and such incompetence is permanent in its nature and such fact has been proven to the satisfaction of the court; or~~

~~(d) the other parent, for one year preceding, has abandoned the family; or~~

~~(e) the other parent is imprisoned in a penitentiary, state or federal, for crime, provided such parent has been given proper notice and is authorized by the institutional head to attend said hearing and show cause why the child should not be taken from him or why such relinquishment should not be granted; or~~

~~(f) the other parent has been declared by the court to be morally unfit to provide for the care of the child; or~~

~~(g) by the 2. Single custodial parents;~~

3. The mother, if the child is born out of wedlock; or

~~(3) the 4. The guardian of the person of the child, if both parents are dead or if one parent is a person whose consent is not required under the terms of subdivision (2) of this section authorized by the court.~~

SECTION 6. AMENDATORY 10 O.S. 1991, Section 38, is amended to read as follows:

Section 38. When an order has been entered which provides for payment of child support and the legal custodian temporarily relinquishes physical custody of the child to any person, subject to the provisions of Section ~~27~~ 4 of ~~Title 10 of the Oklahoma Statutes~~ this act, without obtaining a modification of the order to change legal custody, the relinquishment, by operation of law, shall create a presumption that such person to whom the child was temporarily relinquished has legal custody of the child for the purposes of the payment of child support ~~and the~~. The obligee shall remit payments that have been received by the obligee, and the obligor shall remit any such child support obligation required to the person to whom the relinquishment was made.

SECTION 7. AMENDATORY Section 9, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7003-1.1), is amended to read as follows:

Section 7003-1.1 A. 1. Upon notification or receipt of a report that a child may be deprived or whenever the county office determines that there are reasonable grounds to believe that a child may be deprived, the Department of Human Services shall conduct a preliminary inquiry or investigation in accordance with priority guidelines established by the Department.

2. Notification or receipt of a report that a child may be a victim of abuse, and any investigation made as a result of such notification or report, shall be subject to and conducted pursuant to the Child Abuse Reporting and Prevention Act.

3. The Department shall forward its findings to the district attorney's office.

B. 1. If, after the preliminary inquiry or investigation, the Department determines that:

- a. ~~an alleged abuse or neglect of a child was perpetrated by~~ is alleged to be deprived by reason of the action or omission of someone other than a person responsible for the child's health and welfare, and
- b. ~~an alleged abuse or neglect of a child does any~~ actions or omissions resulting in a child being alleged deprived do not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral

transmitted at no later than close of the next day that the local law enforcement agency is open for business.

2. During the preliminary inquiry or investigation, the Department shall determine whether the alleged perpetrator is a parent of any child or is otherwise a person responsible for any child's health or welfare. If the alleged perpetrator is determined to be a parent of a child or is otherwise a person responsible for any child's health or welfare, such determination shall constitute reasonable grounds to conduct a preliminary inquiry or investigation regarding such child pursuant to subsection A of this section.

3. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation of the case unless notice is received from the law enforcement agency as provided by subsection C of this section or the alleged perpetrator is a person responsible for any child's health or welfare.

4. The Department of Human Services shall promulgate rules for the implementation of the provisions of this subsection. Said rules shall include, but not be limited to, provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

C. 1. Any law enforcement agency receiving a referral as provided in this section shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department.

2. Whenever, in the course of any criminal investigation, a law enforcement agency determines that there is cause to believe that ~~the alleged abuse or neglect was perpetrated~~ a child may be a deprived child by the acts or omission of a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office

for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral to the Department of Human Services no later than the close of the next day that the Department is open for business.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 1109, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 4, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7003-3.7), is amended to read as follows:

Section 7003-3.7 A. 1. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court if a petition has been filed alleging that the child is a deprived child or if termination of parental rights is a possible remedy, provided that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian.

2. a. If the child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of this part, the court shall appoint a separate attorney, who shall not be a district attorney, regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel.

b. The attorney appointed for the child shall make arrangements to meet with the child as soon as possible after receiving notification of the appointment. Except for good cause shown, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing in such proceeding. The attorney may speak with the child over the telephone if a personal visit is not possible due to exigent circumstances. If a meaningful

attorney-client relationship between the child and the attorney is prohibited due to age or disability of the child, the attorney shall contact the custodian or caretaker of the child prior to the hearing.

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

3. The attorney may be allowed a reasonable fee for such services.

B. 1. Whenever a petition is filed alleging that a child is a deprived child, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition ~~and~~. The court shall appoint a guardian ad litem upon the request of the child or the attorney of the child and whenever a court-appointed special advocate is available to the court to serve as a guardian ad litem regardless of whether or not a guardian ad litem has been requested by the child or the attorney of the child. A Court-Appointed Special Advocate Program shall be made available to each judicial district.

~~1.~~ 2. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of

the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the child.

2. 3. The guardian ad litem shall be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case,
- b. advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary,
- c. maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child,
- d. monitor the child's best interests throughout any judicial proceeding, and
- e. present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

4. Whenever a court-appointed special advocate is available for appointment as a guardian ad litem as provided by this subsection, the court shall give priority to the appointment of a court-

appointed special advocate as the guardian ad litem of a deprived child.

~~C. 1. The court-appointed special advocate~~

5. a. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to the laws relating to child abuse and neglect including reports generated by service providers.

~~2.~~ b. A court-appointed special advocate shall serve without compensation and shall have such other qualifications and duties and responsibilities as may be prescribed by rule by the Supreme Court.

~~3.~~ c. Any person participating in a judicial proceeding as a ~~court-appointed special advocate~~ guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in positions of management of a ~~CASA~~ court-appointed special advocate organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any ~~CASA~~ court-appointed special advocate organization advocates, managers, or directors.

C. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

SECTION 9. AMENDATORY 10 O.S. 1991, Section 1116, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1997, 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 of Human Services in the child's 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 the child's 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. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the court may dismiss the petition and terminate its jurisdiction at any time for good cause shown when in the best interests of the child.

8. The court may order a child's permanent care and custody transferred to another person upon the written consent of the parents of the child.

- a. Prior to the entry of an order transferring the permanent care and custody of a child, the court shall receive an investigation and report regarding the background and home of the prospective custodian. Such investigation and report of the prospective custodian shall be made pursuant to the requirements of the Oklahoma Adoption Act. The Department of Human

Services shall not be required by the court to make the home study and report as specified by this paragraph.

- b. Upon the entry of an order providing for the transfer of the permanent care and custody of a child, the order shall remain in full force and effect until:
  - (1) the child reaches the age of eighteen (18) years,  
or
  - (2) the parent who consented to the transfer of the permanent care and custody of the child petitions the court for the recovery of the child and the court finds after evidentiary hearing:
    - (a) the child has been abused or neglected while in the care and custody of the custodian,  
and
    - (b) it is in the best interests of the child that custody of the child be returned to the parents, or
  - (3) the district attorney, attorney for the child, or custodian petitions the court for modification of the order transferring permanent care and custody and the court finds after evidentiary hearing that it is in the best interests of the child for the order to be modified.
- c. An order providing for the transfer of the permanent care and custody of a child:
  - (1) shall require that the placement be reviewed within one (1) year after transfer, and
  - (2) shall not require periodic reviews by the court thereafter if the parties agree that such reviews are not necessary to serve the best interests of the child.

9. The court may set a hearing to terminate the parental rights of any person if reunification services are not required pursuant to subsection C of this section.

B. ~~In~~ Except as otherwise provided by subsection C of this section, 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.~~

C. In any dispositional order removing a child from the home of the child, the court may make a determination that efforts to reunite the family are not feasible or required, and that reasonable efforts are being made to secure an alternate permanent placement for the child. When the court orders that reunification services are not feasible or required, the court shall inform the parent that the parent's parental rights may be terminated.

~~C.~~ D. 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) years 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.

~~D.~~ E. 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.

~~E.~~ F. 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.5b of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in Section 11 of this act, whenever a child is removed from a parent's custody, the court shall order services pursuant to the individual treatment and service plan prepared pursuant to Section 7003-5.3 of Title 10 of the Oklahoma Statutes, for the child and the child's parents for the purpose of facilitating reunification of the family as follows:

1. For a child who, on the date of initial removal from the physical custody of the parent, was three (3) years of age or older, court-ordered services shall not exceed a period of twelve (12) months; and

2. For a child who, on the date of initial removal from the physical custody of one parent of the child, was under the age of three (3) years, court-ordered services shall not exceed a period of six (6) months.

B. 1. Court-ordered services may be extended an additional three (3) months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of the parent of the child within the extended time period or that reasonable services have not been provided to the parent.

2. If the court extends the time period, the court shall specify in the court records the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of the parent of the child within the extended time period.

C. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child.

D. Physical custody of the child by the parents during the time period provided shall not serve to interrupt the running of the period.

E. If at the end of the time period, a child cannot be safely returned to the care and custody of a parent without court supervision, but the child clearly desires contact with the parent,

the court shall take the child's desire into account in devising a permanency plan.

F. In cases where the child was under the age of three (3) years on the date of the initial removal from the physical custody of the parent of the child, the court shall inform the parent that the failure of the parent to participate regularly in any court-ordered treatment programs or to cooperate or avail themselves of services provided as part of the Individual Treatment and Service Plan may result in a termination of efforts to reunite the family after six (6) months.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.5c of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Reunification services need not be provided to a parent described in this section, when the court finds by clear and convincing evidence that:

1. The whereabouts of the parent is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in that search;

2. The child or a sibling of the child:

- a. had been previously adjudicated a deprived child pursuant to the Oklahoma Children's Code as a result of physical or sexual abuse,
- b. following the adjudication the child, had been removed from the custody of the parent of the child,
- c. has been returned to the custody of the parent from whom the child had been taken originally, and
- d. is being removed pursuant to the Oklahoma Children's Code, due to additional physical or sexual abuse;

3. The parent of the child has caused the death of another child through abuse;

4. The child has been adjudicated a deprived child pursuant to the Oklahoma Children's Code as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent;

5. The parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph 2, 3 or 4 of this subsection;

6. The child was conceived by means of the commission of rape or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act;

7. The parent of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For purposes of this paragraph, a "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger;

8. a. The court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the child because the parent failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent, or
- b. The parental rights of a parent over any sibling or half-sibling of the child had been permanently severed and that, according to the findings of the court, this parent has not subsequently made a reasonable effort

to treat the problems that led to removal of the sibling or half-sibling of that child from that parent;

9. The parent has been convicted of a Schedule S-1, S-2, S-3 or S-4 felony;

10. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by the Oklahoma Children's Code on at least two prior occasions, even through the programs identified were available and accessible;

11. The parent is willing to consent to termination of parental rights; and

12. Reunification is not in the best interests of the child. The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, mental illness or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful.

B. 1. If the parent is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors twelve (12) years of age or

older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors.

2. Services may include, but shall not be limited to, the following:

- a. maintaining contact between parent and child through collect telephone calls,
- b. transportation services, where appropriate,
- c. visitation services, where appropriate, and
- d. reasonable services to extend family members or foster parents providing care for the child if the services are not detrimental to the child.

3. An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

C. When it is alleged that the parent is incapable of utilizing services due to mental incompetency, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within twelve (12) months.

D. If a court does not order reunification services, it shall conduct a permanency hearing within one hundred twenty (120) days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services;

E. If the court orders a permanency hearing to be held, it shall direct the Department of Human Services to prepare an assessment regarding the likelihood that the child will be adopted if parental rights are terminated. The assessment shall include:

1. Current search efforts for an absent parent or parents;
2. A review of the amount of and nature of any contact between the child and the parents of the child since the time of placement;

3. An evaluation of the child's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the child's characteristics would make it difficult to find a person willing to adopt the child;

4. A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent, guardian or foster parent, to include a social history including screening for criminal records and prior referrals for child abuse if not previously completed, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship;

5. The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional or other condition precludes his or her meaningful response, and if so, a description of the condition.

SECTION 12. 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 6, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7003-5.6), is amended to read as follows:

Section 7003-5.6 A. 1. ~~Every~~ Pursuant to the provisions of Section 9 of this act, 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 the 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 the court terminates jurisdiction.

~~3.~~ B. 1. No later than:

- a. six (6) months for a child who on the date of initial removal from the physical custody of the parents of such child was under the age of three (3) years, and
- b. twelve (12) months ~~after placing a child in out-of-home placement~~ for a child who on the date of initial removal from the physical custody of the parents of such child was three (3) years of age or older,

the court shall conduct a permanency hearing ~~to~~ pursuant to Section 14 of this act.

2. At the dispositional hearings, the court shall consider, in the best interests of the child, whether:

- a. the child should be returned to the child's parents or other family member,
- b. the child should be continued in out-of-home placement for a specified period pursuant to the provisions of Section 10 of this act. If returning home remains the plan for the child, the court must find that the parent has made marked progress towards reunification with the child, the parent has maintained a close and positive relationship with the child and the child is likely to return home within the ~~near future~~ time period specified by Section 10 of this act. The reasons for any such extension shall be placed in the record of the courts,
- 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 permanency hearing may be combined with the six-month review required by this section. If a permanency hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

~~4. C.~~ 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. D.~~ 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. E.~~ Notice of dispositional and review hearings shall be served by the court upon the ~~parties and upon~~ parents, the present foster parent or foster parents entitled to participate pursuant to Section 7208 of this title, the parent's attorney, the guardian ad litem of the child and the child's attorney, each of whom shall be entitled to participate pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act.

~~D. F.~~ 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 7208 and 7003-5.6a of this title and submitted by the child's guardian ad litem;

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 and have corrected the conditions which caused the child to be adjudicated;

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~~ must be 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.~~ G. If it is determined that the child should be placed for adoption, foster parents may be considered eligible to adopt the child, provided the foster parents meet established eligibility requirements. If the child has resided with a foster parent for at least one (1) year, the court shall give great weight to the foster parent in the adoption consideration for the child unless there is an existing loving emotional bond with a relative of the child by blood or marriage who is willing, able and eligible to adopt the child. In the adoption consideration, the court shall consider whether the child has become integrated into the foster family to the extent that his familial identity is with the foster family, and

whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall consider, without limitation:

1. The love, affection, and other emotional ties existing between the child and the relatives of the child, and the child's ties with the foster family;

2. The capacity and disposition of the child's relatives as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;

3. The capacity and disposition of the relatives as compared with that of the foster family to provide the child with food, clothing, and medical care and to meet other physical, mental, and emotional needs of the child;

4. The length of time the child has lived in a stable, satisfactory foster home and the desirability of his continuing to live in that environment;

5. The permanence as a family unit of the foster family;

6. The moral fitness, physical, and mental health of the relatives of the child as compared with that of the foster family;

7. The experiences of the child in the home, school, and community, both when with the parents from whom he was removed and when with the foster family; and

8. Any other factor considered by the court to be relevant to a particular placement of the child.

SECTION 13. AMENDATORY Section 24, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7003-5.6a), is amended to read as follows:

Section 7003-5.6a A. The Department of Human Services or the agency having supervision of the case or, if the child has been removed from the custody of its parents, the Department or the agency or child-placing agency having custody of such child shall cause to be prepared for each review hearing required herein a

written report concerning each child who is the subject of such review.

B. Said report shall include but not be limited to:

1. A summary of the physical, mental, and emotional condition of the child, the conditions existing in the out-of-home placement where the child has been placed, and the child's adjustment thereto;

2. A report on the child's progress in school and, if the child has been placed outside the child's home, the visitation exercised by the parents of such child or other persons authorized by the court;

3. Services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other community placement to independent living; and

4. If the Department is responsible for supervision of the child or is the legal custodian of the child, any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived. Specific recommendations, giving reasons therefor, whether:

a. the parental rights of the parent or parents of the child should be terminated and the child placed for adoption,

b. the child should remain in the home or be placed outside the home of the child's lawful parents, or

c. the child should remain outside the home or be returned to the home from which the child was removed.

C. The attorney representing a child and the guardian ad litem of a child whose case is being reviewed ~~may~~ shall submit a report to the court for presentation at the review hearing to assist the court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.6d of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to Section 7003-5.6 of Title 10 of the Oklahoma Statutes, the court shall hold a hearing to consider the issue of the establishment of permanency for the child.

B. Such a permanency hearing may be held concurrently with a hearing to review, modify, substitute, vacate, or terminate a dispositional order. A permanency hearing shall be conducted in substantial conformance with the provisions of Part 4 of Article III of the Oklahoma Children's Code. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing, the court shall enter written findings and make a determination based upon the permanency plan which will best serve the child's individual interests at that time.

C. After a permanency hearing, the court shall do one of the following:

1. Enter an order to return the child to the child's home;
2. Enter an order to continue placement of the child for an additional three (3) months, at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional three-month period;

3. Direct the district attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship;  
or

4. Enter an order, pursuant to findings required by subsection B of this section, to do one of the following:

- a. transfer guardianship and custody of the child to a suitable person,
- b. transfer sole custody of the child from one parent to another parent,
- c. transfer custody of the child to a suitable person for the purpose of long-term care, or
- d. order long-term foster care placement for the child in a licensed foster care home or facility; or

5. Prior to entering a permanency order pursuant to subsection A of this section, convincing evidence must exist showing that all of the following apply:

- a. a termination of the parent-child relationship would not be in the best interests of the child,
- b. services were offered to the child's family to correct the situation which led to the child's removal from the home, and
- c. the child cannot be returned to the child's home.

D. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interests of the child.

E. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning the child to such custody would be in the best interests of the child.

F. Following the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interests of the child are being served. When such order places the child in the custody of the Department for the purpose of long-term foster care placement in a facility,

the review shall be in a hearing that shall not be waived or continued beyond twelve (12) months after the permanency hearing or the last review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.6e of Title 10, unless there is created a duplication in numbering, reads as follows:

A. At least three (3) weeks prior to the permanency hearing, the Department of Human Services, the foster parents of the child, the guardian ad litem, and the child's attorney shall meet in order to prepare a report regarding the child to the court for review.

The report must contain the:

1. Efforts and progress demonstrated by the child's parent to complete a treatment plan;
2. Extent to which the parent or guardian cooperated and used the services provided;
3. Status of the child, including the child's mental, physical, and emotional health; and
4. Plan for permanency for the child.

B. The child's attorney, the foster parent, or the guardian ad litem of the child may submit an additional informational report to the court for review.

SECTION 16. AMENDATORY 10 O.S. 1991, Section 1404, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7004-1.1), is amended to read as follows:

Section 7004-1.1 A. In addition to the other powers and duties prescribed by law, the Department shall have the power and duty to:

1. Provide for the temporary care and treatment of children taken into protective or emergency custody pursuant to ~~Section 7003-~~

~~1.1 et seq. of this title~~ Article III of the Oklahoma Children's Code and placed in the Department's custody by an order of the juvenile court.

In providing for the temporary care and treatment of an alleged deprived child placed in the Department's custody, the Department shall:

- a. place such children in a children's shelter, a foster home or a relative's home,
- b. if ordered by the court, provide supervision of children alleged to be deprived who are placed by the court in the custody of a parent, relative or other responsible person. Such supervision shall, in accordance with standards established by rules promulgated by the Department, consist of periodic visitation with the child, the child's custodian, and such other persons as may be necessary to assess the safety of the child and to offer voluntary services. Such supervision shall not exceed the period allowed for the filing of a petition or, if a petition is filed, the period authorized by the court,
- c. admit an alleged deprived child in the Department's emergency custody to a hospital or mental health facility as provided in Section 5-507 of Title 43A of the Oklahoma Statutes and shall, if such child is found by the court to be a child in need of mental health treatment, place the child, as provided in paragraph 2 of subsection D of Section 5-512 of Title 43A of the Oklahoma Statutes,
- d. provide such outpatient mental health care and treatment as may be necessary to preserve the health and safety of an alleged deprived child in emergency custody and as prescribed by a qualified mental health

professional. Each child placed in the Department's emergency custody shall receive, as soon as practicable, educational instruction through enrollment in a public school or an alternative program consistent with the needs and abilities of the child,

- e. provide or prescribe treatment services for the family of an alleged deprived child placed in the Department's emergency custody if such services are voluntarily requested and the family is otherwise eligible under application law and rules promulgated by the Department for the services offered, and
- f. provide for each child placed in the Department's emergency custody to receive, as soon as practicable after the filing of the petition, an initial health screening to identify any health problems that require immediate treatment, to diagnose infections and communicable diseases and to evaluate injuries or other signs of neglect or abuse. The Department shall provide such medical care as is necessary to preserve the child's health and protect the health of others in contact with the child;

2. Provide for the care and treatment of an adjudicated deprived child placed in the Department's custody by an order of the juvenile court. In providing for the care and treatment of an adjudicated deprived child placed in the Department's custody, the Department:

- a. shall review and assess each deprived child placed in its custody to determine the type of placement and services consistent with the needs of the child in the nearest geographic proximity to the home of the child. Such review and assessment shall include an

investigation of the personal and family history of the child and his environment, and any necessary physical or mental examination. In making such review, the Department may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child,

- b. shall develop and, upon approval by the court, implement an individual treatment and service plan for each deprived child placed in the Department's custody in accord with the requirements of Section 7003-5.1 et seq. of this title,
- c. may place a deprived child in the home of the child with prior approval of the court pursuant to subsection B of Section 7003-7.1 of this title, in the home of a relative of the child, in a foster home, in a public or private children's shelter, in a group home, in an independent living program, or in any licensed facility established for the care of deprived children. No deprived child shall be placed in an institution operated by the Department,
- d. may admit a deprived child in the Department's custody to a hospital or mental health facility as provided in Section 5-507 of Title 43A of the Oklahoma Statutes and shall, if such child is found by the court to be a child in need of mental health treatment, place the child as provided in paragraph 2 of subsection D of Section 5-512 of Title 43A of the Oklahoma Statutes,
- e. may provide such outpatient mental health care and treatment as may be necessary to meet the treatment needs of a deprived child in the Department's custody and as prescribed by a qualified mental health professional, and

f. shall, if ordered by the court, provide supervision of children adjudicated deprived who are placed by the court in the custody of a parent, relative or other responsible person. Such supervision shall, in accordance with standards established in rules promulgated by the Department, consist of periodic visitation with the child, the child's custodian, and such other persons as may be necessary to determine compliance with the court-approved individual treatment and service plan. Such supervision shall not exceed a period of six (6) months unless extended by the court for good cause shown;

3. Transfer any child in its custody from any authorized placement to another authorized placement if such transfer is consistent with the treatment needs of the child or as may be required in an emergency, subject to the provisions of Section 7003-5.4a of this title;

4. In providing for the outpatient mental health care and treatment of children in its custody, utilize, to the maximum extent possible and appropriate, the services available through:

- a. the guidance centers operated by the State Department of Health,
- b. the Department of Mental Health and Substance Abuse Services, and
- c. community-based private nonprofit agencies and organizations; ~~and~~

5. Provide, when voluntarily requested by a parent, legal guardian or legal custodian pursuant to rules promulgated by the Department, family preservation or other services aimed at the prevention of child abuse or neglect; and

6. Accept a child into voluntary placement when requested by the parent having physical custody of the child pursuant to subsection B of this section.

B. 1. A child is eligible to be accepted into voluntary placement with the Department.

2. On acceptance of a child into voluntary placement, the Department shall prepare a notice of placement and shall file the notice in the case file of the child.

3. A period of voluntary placement pursuant to this section shall not exceed one hundred eighty (180) days. A child shall not be accepted into voluntary placement for more than two periods within twenty-four (24) consecutive months. Voluntary placement shall not be authorized if a deprived action has been initiated pursuant to the Oklahoma Children's Code.

4. A worker shall not accept a child into voluntary placement without the written informed consent of the child's parent, guardian or custodian. The Department shall terminate voluntary placement on receipt of written revocation of consent by the parent, guardian or custodian.

5. Voluntary placement pursuant to the conditions and restrictions of this subsection does not constitute abandonment, abuse or dependency as defined in the Oklahoma Children's Code or grounds for termination of the parent-child relationship pursuant to Section 7006-1.1 of this title and may not be used in a judicial proceeding as an admission of criminal wrongdoing by that parent.

6. The Department shall promulgate rules for the purpose of assessing parents for the full or partial cost of voluntary placement.

C. The Department may participate in federal programs relating to deprived children and services for such children; and apply for, receive, use and administer federal funds for such purposes.

~~C.~~ D. The Department shall receive interest earnings on the investment by the State Treasurer of monies, to be credited to an agency special account, for the benefit of and held in trust for persons placed in the custody of the Department or in residence at facilities maintained by the Department.

SECTION 17. AMENDATORY 10 O.S. 1991, Section 1130, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 8, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1997, 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 of subsection B of Section 60.5 of this title~~ the Oklahoma Adoption Code, who desires to terminate such parent's 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.~~ A finding that the parent or parents have voluntarily placed physical custody of the child in foster care for a period of one hundred eighty (180) days or more with the Department of Human Services or with a child-placing agency and have not manifested during such period the firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child; or

4. A finding that:

~~(1)~~ a. the child has been adjudicated to be deprived, and

~~(2)~~ b. such condition is caused by or contributed to by acts or omissions of the parent, and

- ~~(3) c. termination of parental rights is in the best interests of the child, and~~
- ~~(4) d. (1) the parent has failed to show that the condition which led to the making of such 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.~~
- ~~b. The court may extend for a reasonable time the period in which such parent may show the condition has been corrected if, in the judgment of the court, such extension of time would be in the best interests of the child. The extension for a reasonable time shall be based on the child's age, emotional and developmental or health requirements, or needs.~~
- ~~c. 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 within the time period specified by the Oklahoma Children's Code, or~~
- ~~(2) the court has determined that reunification efforts are not feasible or required; or~~

~~4. 5. 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 the child's attorney; or~~

~~5. 6. 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. 7. A conviction in a criminal action pursuant to ~~the provisions of Sections 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes~~ or the Oklahoma Child Abuse Reporting and Prevention Act, ~~the laws relating to child abuse and neglect~~, or a finding in a deprived child action either that:~~

- a. the parent has ~~physically~~ caused severe physical abuse ~~to~~ 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~~ such 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~~

c. 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

d. the parent has sexually abused, murdered or severely harmed or injured a child; or

8. A finding that the child has been in foster care for fifteen (15) out of the most recent twenty-two (22) months; 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 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 parental rights; or

~~9.~~ 10. 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 or her 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~~ The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

SECTION 18. AMENDATORY 10 O.S. 1991, Section 1131, as amended by Section 66, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7006-1.2), is amended to read as follows:

Section 7006-1.2 A. ~~1.~~ A parent shall be given actual notice of any hearing to terminate such parent's parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least ten (10) days after the receipt of such notice, except with the consent of the parent, if known.

~~2. B.~~ If the court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last-known address of the parent. The notice shall be published once in a newspaper of general circulation in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least ten (10) days after the date of publication of the notice. ~~Except as otherwise provided by subsection B of this section, if a parent has not received actual notice of the hearing at which he is deprived of his parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing.~~

C. Nothing in this section shall prevent a court from immediately taking custody of a child and ordering whatever action may be necessary to protect ~~his~~ the health or welfare of the child.

~~B. For the purpose of terminating the parental rights, a father or putative father of a child born out of wedlock who has not, prior to commencement of a proceeding to terminate parental rights to such child, exercised parental rights and duties or whose consent is not required pursuant to Section 60.6 of this title shall not be deemed to have parental rights to such child. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to this section and Section 29.1 of this title, except that the court may:~~

~~1. Waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock and the mother of the child signs a sworn statement before the court that the identity of the father or putative father of the child is unknown and the court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the court pursuant to this paragraph shall not constitute grounds to challenge an adoption of the child; and~~

~~2. When the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, order that notice be given by publication as provided in subsection A of this section and a copy mailed to the last-known address, if known, of such father or putative father. When notice is given by publication the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.~~

SECTION 19. AMENDATORY 10 O.S. 1991, Section 1134, as amended by Section 69, Chapter 352, O.S.L. 1995, and as renumbered

by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7006-1.5), is amended to read as follows:

Section 7006-1.5 A. ~~Except as otherwise provided for in subsection B of this section, an~~ An action to adopt a child shall not be combined with an action to terminate parental rights and when the rights of a parent have been terminated, neither an interlocutory nor a final decree of adoption may be rendered until the decree terminating parental rights has become final.

B. ~~This section shall not apply to:~~

1. ~~A proceeding to adopt a child without the consent of a parent when the court has determined that consent is not legally required; or~~

2. ~~A proceeding to adopt a child born out of wedlock when the mother of the child is granting consent to the adoption and is a party to the action; or~~

3. ~~Proceedings pursuant to the provisions of Section 60.6 of this title.~~

SECTION 20. AMENDATORY Section 12, Chapter 353, O.S.L. 1995, as amended by Section 14, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7112), is amended to read as follows:

Section 7112. A. ~~In~~ If the child is not already represented by separate counsel, in every criminal case filed pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the judge of the district court ~~may~~ shall appoint an attorney-at-law to appear for and represent a child who is the alleged victim of child abuse ~~or neglect~~ pursuant to Section 7003-3.7 of this title.

~~The attorney may be allowed a reasonable fee for such services and shall meet with the child as soon as possible after receiving notification of the appointment. Except for good cause shown to the court, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing. The attorney shall be given access to all reports relevant to the case and to any reports of~~

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

B. 1. A court-appointed special advocate as defined by the Oklahoma Children's Code and the Oklahoma Juvenile Code may be appointed to represent a child who is the alleged subject of child abuse or neglect. ~~The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section including reports of service providers.~~

~~C.~~ 2. At such time as the information maintained by the statewide registry for child abuse, sexual abuse, and neglect is indexed by name of perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 21. AMENDATORY 10 O.S. 1991, Section 32, is amended to read as follows:

Section 32. No person except:

~~(1) the~~ 1. The parent or parents of the child involved;

~~(2) a~~ 2. A relative ~~within the fourth degree of such,~~ related to the child by blood within the third degree, having lawful custody thereof;

~~(3) the 3.~~ 3. The legal guardian of such child, duly authorized thereto by the court by which ~~he~~ the guardian was appointed; or

~~(4) the 4.~~ 4. The Department or a ~~child welfare~~ child-placing agency enumerated in ~~Section 4 of this act,~~ if the care and custody of the child has been relinquished to the Department or the agency under the terms of this act or has been committed thereto by order of judgment of a court of competent jurisdiction, shall place or offer to place a child for care in a foster home without securing the consent of the Department of ~~Public Welfare~~ Human Services or court.

SECTION 22. AMENDATORY 44 O.S. 1991, Section 47, as amended by Section 1, Chapter 121, O.S.L. 1993 (44 O.S. Supp. 1997, Section 47), is amended to read as follows:

Section 47. A. Enlistments in the National Guard. Hereafter, the period of enlistment in the National Guard of this state shall be for three (3) years or such other time as prescribed by National Guard regulations, and the qualifications for enlistment shall be the same as those prescribed for admission to the Regular Army or Regular Air Force or National Guard regulations; provided that the privilege of continuing in active service during the whole of an enlistment period and of reenlisting in the said service shall not be denied except as herein otherwise provided. Unless otherwise prohibited by federal law or by Department of Army, Department of Air Force or National Guard Bureau regulations, enlisted members and prospective members of the Oklahoma Army and Air National Guard who have successfully completed the requirements for and have obtained a General Education Diploma (G.E.D.) shall be awarded a high school diploma by the State of Oklahoma. The State Department of Education shall issue this high school diploma. Such diploma shall be limited to the purposes of enlistment and admission in the National Guard pursuant to the provisions of this section. Such purpose shall be specified on the high school diploma. All enlisted men of the

National Guard of this state shall sign an enlistment contract and take and subscribe to the oath required by National Guard regulations. Any officer or warrant officer of the Armed Forces of the United States may administer the enlistment oath.

B. 1. By complying with this subsection, a single custodial parent who is an applicant for enlistment in the Oklahoma National Guard satisfies the requirements of National Guard Regulation 600-200 or Air National Guard Regulation 39-09 regarding relinquishment of custody by temporarily relinquishing custody of a minor child to an adult blood relative of the child within the third degree of consanguinity for all periods of active duty during the term of enlistment; provided, such temporary relinquishment shall:

- a. be in writing,
- b. clearly identify the child, the person to whom custody is being relinquished, that person's relationship to the child, and the period of enlistment for which custody is to be temporarily relinquished,
- c. be executed by the parent/applicant before a notary public, and
- d. clearly state that it is for all purposes, including health care, during the periods of time in question.

2. A certified copy or executed copy of the written temporary relinquishment shall become a part of the applicant's permanent Oklahoma National Guard file.

3. Nothing in this section shall terminate, interfere, delay or negate any right of visitation by the noncustodial parent, or any person granted visitation by court order.

4. It is the intent of the Legislature that a temporary relinquishment pursuant to the provisions of this section shall not be a substantial change to any existing custody decree nor shall it be deemed a voluntary permanent relinquishment of custody.

SECTION 23. RECODIFICATION 10 O.S. 1991, Section 26, as amended by Section 2 of this act, shall be recodified as Section 7001-1.4 of Title 10 of the Oklahoma Statutes, unless there is created a duplication in numbering. 10 O.S. 1991, Section 27, as amended by Section 3 of this act, shall be recodified as Section 7001-1.5 of Title 10 of the Oklahoma Statutes, unless there is created a duplication in numbering. 10 O.S. 1991, Section 32, as amended by Section 21 of this act, shall be recodified as Section 7202.1 of Title 10 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 24. REPEALER 10 O.S. 1991, Sections 25, 30 and 31, are hereby repealed.

SECTION 25. 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.

46-2-9102 KSM