STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2402 By: Case of the House

and

Brown of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997, Section 13, Chapter 352, O.S.L. 1995, as amended by Section 7, Chapter 421, O.S.L. 1998, 1116, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 18, Chapter 421, O.S.L. 1998, 1404, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 28, Chapter 421, O.S.L. 1998, Section 25, Chapter 353, O.S.L. 1996, as last amended by Section 2, Chapter 2, O.S.L. 1999 and Section 51, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1999, Sections 21.1, 7003-2.4, 7003-5.5, 7004-1.1, 7004-1.5 and 7004-2.1), which relate to the custody of children; clarifying and updating priority of placement; removing certain restrictions; requiring placement with the noncustodial parent or other statutory priority; providing exceptions; making determination for nonplacement on the record; providing for determination of home communities; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1999, Section 21.1), is amended to read as follows:

Section 21.1 A. Custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:

1. A parent or to both parents jointly except as otherwise provided in subsection B of this section;

2. A grandparent;

3. A person who was indicated by the wishes of a deceased parent;

4. A relative of either parent;

5. The person in whose home the child has been living in a wholesome and stable environment; or

6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. ~~When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the~~ The court may only deny the noncustodial parent custody of the child or guardianship ~~only~~ of the child if:

1. ~~The noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for~~

a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:

~~a.~~ (1) in substantial compliance with a support provision ~~contained in a decree of divorce, or a decree of separate maintenance~~ or an order ~~adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support~~ entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

~~b.~~ (2) according to such parent's financial ability to contribute to ~~such~~ the child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and

b. The denial of custody or guardianship is in the best interest of the child;

2. The noncustodial parent has abandoned the child as such term is defined by Section 7006-1.1 of this title; or

3. The court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

D. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

E. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody of, guardianship of or visitation with a child is or has previously been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person subject to or previously subject to the registration

requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

SECTION 2. AMENDATORY Section 13, Chapter 352, O.S.L. 1995, as amended by Section 7, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7003-2.4), is amended to read as follows:

Section 7003-2.4 A. 1. The peace officer or an employee of the court shall provide the parent, legal guardian or custodian of a child immediate written notice of the protective or emergency custody of the child whenever possible.

2. The written notice shall:

a. inform the parents, legal guardian or custodian that the child has been removed from the home,

b. inform the parent, legal guardian or custodian of the child that an emergency custody hearing to determine custody of the child will occur within two (2) judicial days from the date the child was removed from the home, and

c. contain information about the:

(1) emergency custody hearing process, including, but not limited to, the date, time and place that the child was taken into protective or emergency custody,

(2) nature of the allegation that lead to placement of the child into protective or emergency custody,

(3) address and telephone number of the local and county law enforcement agencies,

(4) phone number of the local office of the Department of Human Services, and

(5) right of the parent, legal guardian or custodian to contact an attorney.

3. The written notice shall also contain the following or substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."

B. 1. Within the next two (2) judicial days following the child being taken into protective or emergency custody, the court shall conduct an emergency custody hearing to determine whether evidence or facts exist that are sufficient to demonstrate to the court there is reason to believe the child is in need of protection due to abandonment or abuse or neglect, or is in surroundings that are such as to endanger the health, safety and welfare of the child.

2. At the emergency custody hearing, the court shall advise the parent, legal guardian or custodian of the child in writing of the procedure which will be followed with regard to determining custody of the child, including, but not limited to:

a. the right of the parent or guardian to testify and present evidence at court hearings,

b. the right to be represented by an attorney at court hearings,

c. the consequences of failure to attend any hearings which may be held, and

d. the right to appeal and the procedure for appealing the finding of a court on custody issues.

3. a. At the emergency custody hearing, the court shall:

~~a.~~ (1) release the child to the child's parent, legal guardian or custodian,

~~b.~~ (2) release the child to the child's parent, legal guardian or custodian or other responsible adult under such conditions as the court finds

reasonably necessary to ensure the health, safety and welfare of the child, or

~~c.~~ (3) continue the child in or place the child into emergency custody.

b. If a child has been removed from the custodial parent of the child and the court, in the best interests of the child, is unable to release the child to the custodial parent, the court shall give priority for placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests. If the court cannot place the child with the noncustodial parent, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be documented in the court record.

C. 1. a. Except as otherwise provided by this subsection, a petition for a deprived child proceeding shall be filed and a summons issued within five (5) judicial days from the date of assumption of custody; provided, however, such time period shall not apply if, upon request of the district attorney at the emergency custody hearing, the court determines that there are compelling reasons that an additional amount of time for the filing of the petition for a deprived child proceeding is warranted.

b. In all such cases provided for in this subsection, a petition shall be filed within fifteen (15) days of the child's being taken into custody.

2. If the petition is not filed as required by this subsection, then the emergency custody order shall expire. The district

attorney shall submit for filing in the court record written memoranda specifying the reasons why the petition was not filed and note the person to whom the child was released.

D. 1. If the petition was filed within the time period specified in subsection C of this section, except as otherwise provided by this section, the emergency custody order shall remain in force and effect for not longer than thirty (30) days, except as otherwise provided by this subsection.

2. The court for good and sufficient cause shown may extend the effective period of such an order for an additional thirty (30) days.

3. No emergency custody order shall be extended beyond the additional thirty (30) days absent a showing that such further extension is necessary to ensure the health and safety of the child and is in the best interests of the child.

E. 1. The court may hold additional hearings at such intervals as may be determined necessary by the court to provide for the health, safety and welfare of the child.

2. The parent, legal guardian or custodian of the child, the child's attorney, the district attorney and guardian ad litem if appointed shall be given prior adequate notice of the date, time, place and purpose of any hearing by the court.

F. In scheduling hearings, the court shall give priority to proceedings in which a child is in emergency custody.

G. 1. No order of the court providing for the removal of a child alleged to be deprived from the home of such child shall be entered unless the court makes a determination:

a. that continuation of the child in the child's home is contrary to the welfare, health and safety of the child, and

b. as to whether or not reasonable efforts were made to prevent the need for the removal of the child from the child's home, or

c. as to whether or not an absence of efforts to prevent the removal of the child from the child's home is reasonable because the removal is due to an alleged emergency and is for the purpose of providing for the health and safety of the child, or

d. reasonable efforts to provide for the return of the child to the child's home are not required pursuant to Section ~~14~~ 7003-4.6 of this ~~act~~ title; provided, however, upon such determination, the court shall inform the parent that a permanency hearing will be held within thirty (30) days from the determination.

2. In all proceedings or actions pursuant to this subsection, the child's health and safety shall be the paramount concern.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1116, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 18, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7003-5.5), is amended to read as follows:

Section 7003-5.5 A. 1. When a child has been adjudicated deprived pursuant to the provisions of Section 7003-4.5 of this title, the court may enter a dispositional order on the same day, but in any event the court shall hold a dispositional hearing and enter such order within forty (40) days of such adjudication unless the court finds on the record that the best interests of the child will be served by granting a delay.

2. If the court grants a delay, the court shall state why the delay is necessary and shall state the minimum amount of time needed to resolve any such reasons for the delay. The court shall schedule the dispositional hearing at the earliest possible time following the delay.

B. If the child is removed from the custody of the child's parent, the court or the Department of Human Services, as applicable, shall immediately consider concurrent permanency planning, so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child.

C. 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. If a child has been removed from the custodial parent of the child and the court, in the best interests of the child, is unable to release the child to the custodial parent, the court shall give priority for placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests. If the court cannot place the child with the noncustodial parent, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be documented in the court record. 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~~ returned to the child's parent ~~or~~, legal guardian or custodian, but if it appears to the court that the conduct of ~~such~~ the parent, legal guardian, custodian, or that a 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, legal guardian, custodian, stepparent, or other adult person living in the home has contributed to the deprivation of the child, the court may order that the parent, legal guardian, 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, subject to residual parental rights and responsibilities, subject to order of the court and 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,

(2) shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, and

(3) unless periodic reviews are required pursuant to this subparagraph, the court may close the case.

9. a. When reunification of the family is not recommended or possible, the court may order a child's permanent care and custody transferred to a kinship guardian. Kinship guardianship shall include, but not be limited to, the following parental responsibilities with respect to a child:

(1) protection,

(2) education,

(3) care and control,

(4) custody, and

(5) decision making.

b. A kinship foster parent may file a petition with the court to be appointed as kinship guardian for a child. The petition shall allege that:

(1) a child is placed with the Department,

(2) more than twelve (12) months have passed since the date of the dispositional order placing such child with the Department,

(3) the parents of the child are presently and for the foreseeable future unable to provide proper and adequate care for the child,

(4) the prospective kinship guardian consents to the appointment,

(5) the child has resided with the kinship foster parent and there exists a loving and emotional tie between the child and the kinship foster parent, and

(6) it would be in the best interests of the child for the petition to be granted.

c. Notice of the petition and a copy of the petition shall be served upon the parties, the Department, and the guardian ad litem of the child.

d. If the court finds that the elements of the petition have been proven based on clear and convincing evidence, or upon the consent of all parties, the court shall grant the petition.

e. An order appointing a person as a kinship guardian shall award custody of the child to the kinship guardian. A kinship guardian shall have the same authority as a parent to consent on behalf of a child, except that a kinship guardian shall not consent to the adoption or surrender of a child.

f. If the Department's Title 4E waiver application for assisted guardianship is approved, the Department shall, if funds are available, make monthly payments to the kinship guardian as if the child were in foster care and subject to the procedures, limitations and minimum payments of such foster care program. Funds available to the child based on the child's eligibility under the Medicaid program shall be provided to the child without regard to the kinship guardian's income or resources.

g. Upon the entry of an order providing for the transfer of the permanent care and custody of a child to a kinship guardian, the order shall remain in full force and effect until:

(1) the child reaches the age of eighteen (18) years, or

(2) the court finds after evidentiary hearing:

(a) the child has been abused or neglected while in the care and custody of the kinship guardian, 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, an attorney for the child, or the kinship guardian petitions the court for modification of the order transferring permanent care and custody to a kinship guardian and the court finds after evidentiary hearing that it is in the best interests of the child for the order to be modified.

h. An order appointing a kinship guardian shall:

(1) require that the placement be reviewed within one (1) year after transfer,

(2) not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, unless periodic reviews are required pursuant to the Department's obtaining a Title IV-E waiver, or such reviews are otherwise required by the court, and

(3) close the case unless periodic reviews are required.

i. Except as otherwise provided by the court, the appointment of a kinship guardian shall not affect or impair the visitation rights of a parent.

D. Any order entered pursuant to this section shall include a statement informing the child's parent that the consequences of noncompliance with the requirement of the court may include termination of the parent's rights with respect to the child.

E. 1. Except as otherwise provided in subsection F 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:

a. reasonable efforts have been made to provide for the safe return of the child to the child's own home, or

b. reasonable efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

2. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

F. 1. At any hearing held pursuant to the provisions of this section, if the court finds that continuation of reasonable efforts to return the child home are inconsistent with the permanency plan for a child, the court shall determine whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

2. Reasonable efforts to reunite the child with the child's family shall not be required however, pursuant to the provisions of Section ~~14~~ 7003-4.6 of this ~~act~~ title.

G. 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.

2. 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 literacy, 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.

3. 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.

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

H. In any dispositional order involving a child sixteen (16) years of age 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.

I. 1. If reasonable efforts are required for the return of the child to the child's home, the court shall allow the parent of the child not less than three (3) months to correct conditions which led to the adjudication of the child as a deprived child prior to terminating the parental rights of the parent pursuant to the provisions of Section 7006-1.1 of this title.

2. The court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated.

3. 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 such child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate upon final decree of adoption.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1404, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 28, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1999, 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 of Human Services 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 the provisions of 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. In determining any placement for a child who has been removed from the custody of a custodial parent and placed with the Department in emergency or protective custody, priority shall be given by the Department to the placement of such child with the noncustodial parent of the child unless such placement is not in the best interests of the child. If it is determined by the Department that placement with the noncustodial parent is not in the best interests of the child, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be specified in the agency records concerning the child. In addition, such reasons shall be made known to the court by the Department,

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 Commission for Human Services, 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 Commission 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 the child's environment, and any necessary physical or mental examination. In making such review, the Department may use any facilities, public or private, which offer to aid 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 Commission, 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 custodian pursuant to rules promulgated by the Commission, family preservation or other services aimed at the prevention of child abuse or neglect.

B. 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. 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 5. AMENDATORY Section 25, Chapter 353, O.S.L. 1996, as last amended by Section 2, Chapter 2, O.S.L. 1999 (10 O.S. Supp. 1999, Section 7004-1.5), is amended to read as follows:

Section 7004-1.5 A. There is hereby established a Kinship Foster Care Program in the Department of Human Services.

B. 1. a. When a child has been removed from the child's home and is in the care and custody of the Department, the Department shall attempt to place the child with a person determined by the Department to have a kinship

relationship with the child if such placement is in the best interests of the child.

b. In determining a kinship placement for a child who has been removed from the custody of a custodial parent and placed with the Department in emergency or protective custody, priority shall be given by the Department to the placement of such child with the noncustodial parent of the child unless such placement is not in the best interests of the child. If it is determined by the Department that placement with the noncustodial parent is not in the best interests of the child, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be specified in the agency records concerning the child. In addition, such reasons shall be made known to the court by the Department.

c. A child's health, safety and welfare shall be of paramount concern in any placement.

2. The Department shall establish, in accordance with the provisions of this section, eligibility standards for becoming a kinship foster care family.

C. 1. A person shall be eligible to become a kinship foster parent only upon the completion of the records search to ascertain if there is an Oklahoma record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective kinship foster parent's home.

2. Following placement, the Oklahoma State Bureau of Investigation shall complete a national criminal history records search based upon submission of fingerprints for any kinship foster parent and any adult residing in the home of such parent, and shall

make the results of the records search available to the Department pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act. The Director of Human Services or designee may authorize an exception to the fingerprinting requirement for an adult residing in the kinship foster care home who has a severe physical condition which precludes such person’s being fingerprinted.

3. The Department shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a kinship foster parent.

4. It shall be unlawful, except for the purpose of determining a person's eligibility for kinship foster care, for any person to disclose information obtained under this subsection.

5. Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

D. A person related by blood, marriage, adoption and by emotional tie or bond to a child may be eligible for approval as a kinship foster care parent.

E. The Department shall determine whether the person is able to effectively care for the foster child by:

1. Reviewing personal and professional references;

2. Observing during a visit to the home of the kinship foster care family; and

3. Interviewing the kinship foster care parent.

F. If the person is approved by the Department to provide kinship foster care services, in accordance with rules promulgated by the Commission for Human Services regarding foster care services, and a placement with the kinship foster care family is made, the kinship foster care family shall be eligible to receive payment for the full foster care rate for the care of the child and any other

benefits that might be available to foster parents, whether monetary or in services.

G. 1. The Department and the kinship foster care parent shall develop a plan for the care of the child, which shall be periodically reviewed and updated.

2. The kinship foster parent shall cooperate with any activities specified in the case plan for the child including, but not limited to, counseling, therapy, court sessions, visits with the child's parents or other family members, and training.

H. The Commission for Human Services shall promulgate rules necessary to carry out the provisions of this section pursuant to the Administrative Procedures Act.

SECTION 6. AMENDATORY Section 51, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1999, Section 7004-2.1), is amended to read as follows:

Section 7004-2.1 A. The Department of Human Services shall, to the extent of funds available, directly or by grant or contract, develop and implement a diversity of community-based services and community-based care for children who are alleged or adjudicated deprived. Community-based services are prevention and remedial services including, but not limited to, home-based counseling, therapy and crisis intervention services, nonresidential educational, vocational, social and psychological diagnostic and counseling services, substance abuse treatment, sexual abuse treatment, emergency shelter and foster care, and other related protection, prevention and treatment services which are provided, whenever practicable, in or near a child's home community. <u>If a child is placed with a noncustodial parent, the noncustodial parent's home shall be construed to be the child's home community.</u> Community-based care is care in a foster home, group home, community residential center or similar nonsecure facility consistent with the individualized treatment needs of the child and provided, whenever

practicable, in or near a child's home community. The Department is authorized to contract with any federal, state, local or tribal governmental agency or with any qualified private person, association or agency to develop, administer, coordinate or provide community-based services and community-based care.

B. The Department shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services and community-based care. A copy of such procedures shall be made available to any member of the general public upon request.

C. Requests for proposals developed by the Department shall be based upon documented client and service needs and identified priorities. The request for proposals shall clearly identify the program or services requirements, the population to be served and performance expectations. The agency shall adopt clear, written guidelines to ensure uniformity in the management, monitoring and enforcement of contracts for services. If in-state private providers are unable or unwilling to respond to the proposal, then out-of-state providers should be encouraged to respond.

D. Nothing in this section shall serve to limit the authority of the Department to secure federal funding for community-based services and community-based care or compliance by the Department with federal law and regulations governing the expenditure of such funds.

E. Any state-funded grant or contract for the establishment of community residential care or treatment facilities for children shall require, as a condition for receipt of such grant or contract, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been made for providing the educational services to which residents of the facility are entitled pursuant to state and federal law.

F. The Department of Human Services is hereby authorized to, and shall, enter into cooperative agreements with the Department of Juvenile Justice for the use by both Departments of existing community-based programs, management information and client tracking systems, and other shared resources as deemed necessary or appropriate by both Departments.

G. The Department of Human Services is hereby authorized to expend a sum not to exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) from monies appropriated for that purpose from the Human Services Fund during each fiscal year for the purpose of providing subsidy payments to licensed nonprofit child care institutions within the State of Oklahoma to furnish food, clothing, shelter and upkeep for Oklahoma children and to assist the agency in developing a more comprehensive program to meet the needs of each child in the program including, but not limited to, social services, recreational activities and individual and family counseling with the goal of returning the child to his family. Such subsidy shall be made on a per capital basis not to exceed One Thousand Two Hundred Dollars ($1,200.00) per year and shall be expended in twelve (12) monthly payments beginning July 1 of the fiscal year. Nothing in this section shall preclude an individual from receiving federal matching funds for which he would otherwise be eligible.

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

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