

ENGROSSED HOUSE
BILL NO. 1280

By: Seikel of the House
and
Weedn of the Senate

(children - amending 21 sections in Title 10 -
postadjudication review boards - Oklahoma
Children's Code - Oklahoma Child Care Facilities
Licensing Act - amending 43 O.S., Section 112 -
codification - effective date -
emergency)

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1116.3, as last amended by Section 6, Chapter 416, O.S.L. 1998 (10 O.S. Supp. 1998, Section 1116.3), is amended to read as follows:

Section 1116.3 A. Postadjudication review boards shall function in an advisory capacity to the district court and, in accordance with the provisions of subsection C of this section, the district planning and coordination boards for services to children and youth of the Oklahoma Commission on Children and Youth.

The duties of a review board shall be to:

1. Review the case of every adjudicated deprived child at least once every six (6) months and submit to the court within ten (10) days of any review hearing its findings and recommendations.

a. Such review shall include, but not be limited to, consideration and evaluation of:

(1) the appropriateness of the goals and objectives of the treatment and service plan, and

(2) the appropriateness of the services provided to the child, and to the parent, stepparent, or other adult living in the home of the child, or legal guardian, or custodian.

b. Reviews of cases and reports to the court shall be scheduled to ensure that the court receives the findings and recommendations of the review board prior to each regularly scheduled six-month review of the case by the court;

2. Review the case of every child alleged to be deprived and held in an out-of-home placement, other than a juvenile detention center, on a preadjudicatory or predisposition custody order for more than ninety (90) days. Such cases shall be reviewed by a review board not more than forty-five (45) days after the expiration of the ninety days. Such review shall include, but not be limited to, consideration and evaluation of:

- a. whether the continued out-of-home placement is in the best interests of the child in light of the child's need for permanency and recognizing that permanency is in the best interests of the child,
- b. the appropriateness of the continued out-of-home placement, and
- c. in the absence of a court-ordered treatment and service plan, the appropriateness of the services provided to the child and any family members or other adult living in the home of the child;

3. Review the case of every child alleged to be deprived or adjudicated deprived pursuant to the laws of another state or territory, if the child is currently residing in Oklahoma and the Department of Human Services has been notified of the change of residence by the other state or territory pursuant to the Interstate Compact on the Placement of Children or other agreement concerning

the child. The Department shall notify the proper review board of the location of the child and shall provide such review board with information received by the Department from the other state concerning the child or placement and with any reports made by the Department concerning the child or placement. The review board shall report its findings to the Department and may report such findings to the agency or court in the state having jurisdiction for the custody of the child and to the district court of the state in which the child resides.

4. If approved by the court, review the case of any juvenile adjudicated delinquent or in need of supervision. Such review shall include, but not be limited to, consideration and evaluation of:

- a. the appropriateness of the placement,
- b. the appropriateness of the services provided to the child and any family members or other adult living in the home of the child, and
- c. the appropriateness of the goals and objectives of the treatment and service plan; and

~~4.~~ 5. Forward copies of the findings and recommendations of the review board to the court having jurisdiction of the case, the parent, legal guardian, attorney representing the child, custodian of the child, agency supervising the case or legal custodian of the child and to any other interested party as determined by the court. It shall be the duty of the court clerk to ensure that all documents filed pertaining to the case of an adjudicated child are properly noted and affixed in the file of the child prior to the commencement of the review process by the review board. The bailiff or bailiffs of the judges having juvenile docket responsibility within the district shall transmit the information necessary for the case reviews to the review board for that district.

B. The review board's report of its findings and recommendations shall be admitted into evidence in any dispositional

hearing, and may be relied upon to the extent of its probative value, even though not competent for purposes of an adjudicatory hearing.

C. In addition to its reviewing function, a review board, as directed by the Oklahoma Commission on Children and Youth and in coordination with the district planning and coordination boards shall:

1. Promote and encourage all child placement agencies to maximize family stability and continuity for a child by discouraging unnecessary changes in placement and by recruiting persons to provide placement who may be suitable and willing to adopt;

2. Review the efforts of agencies and institutions to find permanent placement for eligible children and report to the court;

3. Encourage a meeting between the various responsible public and private agencies, institutions, and officers of the court in order to facilitate cooperation and coordination of efforts; and

4. Assess community resources, and develop, if not already available, a directory of responsible persons, agencies, and institutions.

D. A review board may solicit the attendance at its meetings of persons known to the board with information concerning the case of any child subject to its review. However, no employee of the Office of Juvenile Affairs shall be required to attend a review board meeting.

E. A review board shall report annually its findings, recommendations, and assessments of the effectiveness of sections of law pertaining to individual treatment plans, information to accompany deprived children placed outside the home, and dispositional orders and Sections 1116.2 through 1116.6 of this title to the Administrator of the Courts, the Supreme Court, to the court having jurisdiction of the case, to the State Postadjudication Review Advisory Board, and the Oklahoma Commission on Children and

Youth and provide such other reports as deemed proper or that may be requested from time to time by the Oklahoma Commission on Children and Youth, the Governor, the Legislature, or the Supreme Court.

F. It shall be the duty of the court having jurisdiction of the case to acknowledge the receipt of the recommendations of the review board and note to the review board the actions of the court regarding the recommendations submitted by the review board.

G. A review board member may attend any court hearing concerning the case of any child subject to review by the board.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1107, as last amended by Section 10, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1998, Section 7003-2.1), is amended to read as follows:

Section 7003-2.1 A. ~~A~~ Prior to the filing of a petition in a deprived child proceeding, a child may be taken into protective custody prior to the filing of a petition:

1. ~~By~~ Protective custody by a peace officer or employee of the court, without a court order if the child's surroundings are such as to endanger the welfare of the child;

2. ~~By~~ Emergency custody by an order of the district court issued upon the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal, which shall be supported by facts sufficient to demonstrate to the court that there is reasonable suspicion to believe that the child is in need of protection due to abandonment, abuse or neglect or is in surroundings that are such as to endanger the welfare of the child. If verbal, a written

application shall be submitted to the district court no later than the close of the next day that the court is open for business; and

3. ~~By~~ Emergency custody by order of the district court when the child is in need of medical treatment or mental health treatment in order to protect the child's health or welfare and the child's parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action pursuant to this article.

B. Whenever a child is taken into ~~protective~~ custody pursuant to this section:

1. Such child may be taken to a children's shelter located within the county where ~~protective~~ custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court;

2. Except as otherwise provided by subsection C of this section, ~~such a~~ child in protective custody may be taken before a judge of the district court for the purpose of obtaining an order for ~~protective~~ emergency custody. The child may be placed in the custody of the Department, if ordered by the court, for placement in ~~a relative's home or in~~ foster care if such placement is determined by the Department to meet the needs of the child;

3. Such child may be taken directly to or retained in a health care facility for medical treatment, when it reasonably appears to the peace officer or court employee that the child is in need of immediate medical treatment to preserve the child's health, or as otherwise directed by the court; or

4. Such child may be taken directly to or retained in a mental health facility for mental health care, or inpatient mental health evaluation or inpatient mental health treatment, in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, when it reasonably appears to the peace officer or court

employee that the child is in need of emergency mental health care to preserve the child's health, or as otherwise directed by the court; and

5. Except as otherwise provided by subsection C of this section, the district court of the county where the ~~protective~~ custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into ~~protective~~ custody. If notification is verbal, written notification shall be sent to the district court by the close of business on the next day that the court is open for business.

C. The court may provide, in an order issued pursuant to this section or by a standing order or rule, for the disposition of children taken into ~~protective~~ custody and notification of the ~~protective~~ custody. Such order or rule shall be consistent with the provisions of subsection B of this section, but may also:

1. Designate a licensed child care facility other than a children's shelter appropriate for the temporary care of deprived children or children alleged to be deprived if such facility is willing to provide care;

2. Authorize the release of a child from ~~protective~~ custody in accord with such criteria as the court specifies or the placement of a child with such responsible persons as the court may designate and who are willing to provide care for the child pending further proceedings; and

3. Require such notice to the court concerning the assumption of ~~protective~~ custody and the disposition of children taken into ~~protective~~ custody as the court may direct.

D. No child taken into ~~protective~~ custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious, or dissolute persons.

SECTION 3. AMENDATORY Section 11, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1998, Section 7003-2.2), is amended to read as follows:

Section 7003-2.2 A. If the child who is taken into protective or emergency custody due to the need of immediate ~~emergency~~ medical treatment or mental health care to protect the child's health or welfare, the court may issue an emergency ex parte order upon application of the district attorney of the county in which the child is located. The application for an emergency ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of ~~emergency~~ immediate treatment or care to protect the child's health or welfare.

B. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any emergency ex parte order issued by the court shall be served upon such parent, guardian, or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application, the court shall hold a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

SECTION 4. AMENDATORY Section 12, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1998, Section 7003-2.3), is amended to read as follows:

Section 7003-2.3 A. Except as otherwise provided by law, whenever a child in protective or emergency custody appears to be in need of medical treatment or mental health treatment, a peace officer, employee of the court, or any other legal custodian of the child shall exercise due diligence to locate a parent, guardian, or other person legally competent to authorize such treatment.

B. The consent of a parent, guardian, or other person legally competent to authorize medical treatment or mental health

evaluations or treatment for a child shall not be required and the peace officer, employee of the court, or other legal custodian may authorize such treatment or evaluation:

1. When a child in protective or emergency custody requires ~~emergency~~ immediate medical treatment or mental health treatment if such treatment, as determined by a competent medical or mental health authority, as the case may be, cannot be delayed; or

2. For any physical examination or routine diagnostic proceeding or evaluation necessary, as determined by competent medical authority, to determine the medical or mental condition of the child for the protection of the child and others with whom the child may come in contact while in custody.

C. 1. a. If the parent, guardian, or other person legally competent to authorize medical treatment for the child is unavailable to consent to such treatment, the court, upon application of the district attorney of the county in which the child is located, shall conduct a hearing not later than five (5) days after filing of the application.

b. If the parent, guardian, or other person legally competent to authorize medical treatment for the child is unwilling to consent to such treatment, the court, upon application of the district attorney of the county in which the child is located or upon application of a parent or guardian, shall conduct a hearing not later than five (5) days after filing of the application.

2. Notice of the hearing and a copy of the application shall be served upon the parent, guardian, or other person legally competent to consent to medical treatment for the child, upon the district attorney and upon the person or agency having ~~protective~~ custody of the child.

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

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

SECTION 5. AMENDATORY Section 22, Chapter 353, O.S.L. 1996, as amended by Section 4, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7003-5.4a), is amended to read as follows:

Section 7003-5.4a A. 1. The Department of Human Services shall notify the court having jurisdiction, the appropriate review board, the appropriate district attorney and the attorney and court-appointed special advocate of the child or guardian ad litem, if any, whenever a child in the custody of the Department is moved from one location to another. Foster parents shall be notified by the Department prior to movement of the child pursuant to the provisions of Section 7208 of this title.

2. The Department shall inform the court and attorney regarding the location of the child unless the movement was due to an emergency situation, in which case the notification required by this paragraph shall be within one (1) business day after such movement. As used in this subsection, "emergency situation" means a movement of the child requested by a person having actual physical custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or if movement is for emergency medical treatment.

B. The Department shall not move any deprived child from one placement to another if the child has already been moved once since the last court hearing without first obtaining the approval of the court following a hearing into the reasons and necessity for moving the child. However, the Department may move any child due to an emergency, in which case a hearing shall be conducted concerning the

reasons and necessity for moving the child, if requested in writing, within ten (10) days following the moving of the child. Court approval shall not be required for movement to or from a children's shelter due to an emergency, including a placement failure, a placement disruption, or similar cause.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1123, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 7, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1998, Section 7003-6.2), is amended to read as follows:

Section 7003-6.2 A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court pursuant to Section 7003-6.4 of this title and the rules of the Supreme Court of this state.

B. The pendency of an appeal thus taken shall not suspend the order of the district court regarding a child, nor shall it remove the child from the custody of that court or of the person, institution or agency to whose care such child has been committed, unless the Supreme Court shall so order, except as provided in subsection C of this section. The pendency of an appeal from an order of adjudication shall not prevent the district court from holding a dispositional hearing unless the appellate court shall so order.

C. 1. At any hearing, including, but not limited to, hearings conducted pursuant to Section 7003-8.6 of this title, where it is determined that a child in state custody will be released from state custody, the district attorney or the attorney for the child may give verbal notice to the court of an objection to the order of the court and an intention to seek review of that order based on the grounds that the order of the court ~~creates an unreasonable risk of physical or sexual abuse to~~ releasing the child from state custody is contrary to the welfare, health and safety of the child.

2. Upon giving such notice, the court issuing the custody order in question shall stay the custody order pending the filing of an application and completion of review as provided in this section. The district attorney or attorney for the child shall file with the presiding judge of the administrative judicial district a written application for review within three (3) judicial days from the custody order. If an application is not filed within such time period, or if a written notice to the trial court withdrawing the objection is filed within that time period, the objection will be deemed abandoned and the stay shall be lifted.

3. Each application for review shall be assigned by the presiding judge of the administrative judicial district to a judge within that administrative judicial district with juvenile docket responsibilities. The review shall be completed within five (5) judicial days of the filing of the written application for review. The review conducted by the reviewing judge shall address the question of whether releasing the child from state custody ~~creates an unreasonable risk of physical or sexual abuse to~~ is contrary to the welfare, health and safety of the child. The reviewing court shall review the record of the hearing and any other evidence deemed relevant by the reviewing court. At the conclusion of the review, the reviewing court shall issue its findings of fact and conclusions of law and report them to the court issuing the original custody order.

4. A finding by the reviewing court that the original ~~custody~~ order regarding releasing the child from state custody is ~~inappropriate as a result of an unreasonable risk of physical or sexual abuse to~~ contrary to the welfare, health and safety of the child shall be controlling and the court issuing the original ~~custody~~ order shall proceed to enter a different custody order. If the reviewing court finds that the original ~~custody~~ order ~~did not~~ place is not contrary to the welfare, health and safety of the child

~~at risk of physical or sexual abuse~~ and that the original ~~custody~~ order is otherwise appropriate then the court issuing the original order shall lift the stay and the original order shall be subject to appeal as provided in subsection A of this section. The failure of any court to issue the stay mandated by this subsection shall be subject to immediate mandamus to an appropriate court.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 1126, as amended by Section 45, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1998, Section 7003-8.6), is amended to read as follows:

Section 7003-8.6 A. Any judge who is assigned to hear juvenile cases in counties having a population in excess of one hundred thousand (100,000) may appoint a suitable person or persons to act as referee or referees, to hold office at the pleasure of the judge. Such referees shall be lawyers and shall be specially qualified for their duties. The judge may direct that any case, or all cases of a class or within a county to be designated by the judge, shall be heard in the first instance by a referee in the manner provided for the hearing of cases by the court. Upon the conclusion of the hearing in each case, the referee shall transmit to the court all papers relating to the case, together with the referee's findings of fact and conclusions of law, and recommendations in writing.

B. Notice of the referee's findings and recommendations shall be given to the parent, guardian or custodian of the child, the child's attorney, guardian ad litem or court-appointed special advocate, if any, foster parent or to any other person concerned whose case has been heard by the referee. A hearing by the court shall be allowed upon the filing with the court of a request for such hearing, if the request is filed within three (3) days after the service of such notice. In case no hearing by the court is requested, the findings and recommendations of the referee, when

confirmed by an order of the court, shall become the decree of the court.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 1403.3, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 7, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7004-3.4), is amended to read as follows:

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

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

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

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

- a. supervise personnel assigned to the Office of Advocate Defender,
- b. monitor and review grievance procedures and hearings,
- c. investigate grievances of children and staff grievances related to children which are not resolved at the facility level,
- d. investigate grievances of foster parents related to the provision of foster care services pursuant to this section and Section ~~44~~ 7204.1 of this ~~act~~ title,
- e. investigate allegations of abuse or neglect of children in Department-operated facilities or children who are in the custody of the Department and placed in a private facility,
- f. coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations,
- g. make recommendations to the Commission and to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Commission and to the Director, the Office of Juvenile System Oversight and other appropriate persons as necessary,
- h. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances established by the Commission, in the favor of the complainant, and
- i. perform such other duties as required by the Director of Human Services.

C. The ~~Department~~ Advocate Defender shall promptly and immediately report to the appropriate district attorney having

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

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

E. 1. The Office of Advocate Defender shall investigate any complaint alleging that an employee of the Department or of a child-placing agency has threatened a foster parent with removal of a child from the foster parent, harassed, or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section 7213 of this title,
- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or child-placing agency.

2. The provisions of this subsection shall not be construed to include any complaint resulting from an administrative, civil or criminal action taken by the Department or child-placing agency for violations of law or rules, or contract provisions by the foster parent.

3. The Office of Advocate Defender shall at all times be granted access to any foster home certified, authorized or funded by the Department or a child-placing agency.

4. The Advocate Defender shall report findings of such allegations to the Commission and to the Director.

SECTION 9. AMENDATORY 10 O.S. 1991, Section 1125.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 7, Chapter 416, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7005-1.2), is amended to read as follows:

Section 7005-1.2 A. Except as provided by this section and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

B. The limitation of subsection A of this section shall not apply to statistical information and other abstract information obtained pursuant to the provisions of the Oklahoma Children's Code.

C. Except as authorized by Section 620.6 of this title and this article and except as otherwise specifically provided by state and federal laws pertaining to the confidentiality of records and information and the inspection, release, disclosure, correction or expungement of such information, including, but not limited to, state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the

court. Except as otherwise provided in Section 601.6 of this title, no subpoena or subpoena duces tecum purporting to compel disclosure of such information or record shall be valid.

D. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

1. Except for district attorney's records, any order authorizing the disclosure, release or inspection of such records pursuant to this subsection may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

2. Upon the filing of a petition for an order of the court pursuant to this section, the court shall set a date for a hearing and shall provide three (3) judicial days' notice to the agency holding the records and the person who is the subject of the record if such person is eighteen (18) years of age or older or to the parents of a child less than eighteen (18) years of age who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The hearing may be closed at the court's discretion.

E. Any agency or person may seek an order from the juvenile court prohibiting the release of information subject to disclosure without an order of the court pursuant to Section 620.6 of this title and this article. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

F. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and state specifically the type of information which may be reviewed.

Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of children, parents and such other persons required by the court to be confidential will remain confidential.

G. Nothing in Section 620.6 of this title and this article shall be construed as:

1. ~~Authorizing~~ Except as otherwise provided by law, authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;

2. Authorizing the disclosure of papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the provisions of the Oklahoma Adoption ~~Act~~ Code;

3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

4. Limiting or otherwise affecting access of parties to a deprived proceeding to records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review, or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;

6. Prohibiting the Department of Human Services from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect or to any person providing services to a child who is or is alleged to be a victim of child abuse;

7. Authorizing the disclosure of the identity or location information of any person who has reported an allegation of known or suspected child abuse or neglect unless such disclosure is specifically ordered by the court; or

8. Prohibiting the Department of Human Services from providing a summary of allegations and findings of an investigation involving a child care facility that does not disclose identities but that permits parents to evaluate the facility.

H. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district or as otherwise required to be provided by the Department pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the agency in possession of the records shall provide the ~~requested~~ information to the school district. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

SECTION 10. AMENDATORY Section 12, Chapter 353, O.S.L. 1995, as amended by Section 14, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1998, Section 7112), is amended to read as follows:

Section 7112. A. 1. In every criminal case filed pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the judge of the district court may appoint an attorney-at-law to appear for and

represent a child who is the alleged victim of child abuse or neglect.

2. 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.

3. 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.

4. 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.

5. The attorney shall be charged with the representation of the ~~child's best interests~~ child. 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. A court-appointed special advocate or guardian ad litem 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 or guardian ad litem 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. ~~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~~ A court-appointed special advocate organization, in accordance with

the policies and rules of the Department, may utilize the ~~registry~~ information system established pursuant to Section 7111 of this title for the purpose of completing background screenings of volunteers with the organization.

SECTION 11. AMENDATORY Section 11, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7204.1), is amended to read as follows:

Section 7204.1 A. 1. A foster parent may report to the Office of Advocate Defender of the Department of Human Services an allegation that an employee of the Department or of a child-placing agency has threatened the foster parent with removal of a child from the foster parent, harassed or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section 7213 of this title,
- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or child-placing agency.

2. The provisions of this subsection shall not be construed to include any retaliatory complaints from foster parents resulting from administrative, civil or criminal action taken by the employee or Department or child-placing agency for violations of law or rules, or contract provisions by the foster parent.

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

4. The Advocate General shall establish rules and procedures for evaluating reports of complaints pursuant to paragraph 1 of this subsection and for conducting an investigation of such reports.

B. 1. The Office of Advocate Defender shall prepare and maintain written records from the reporting source that shall contain the following information to the extent known at the time the report is made:

- a. the names and addresses of the child and the person responsible for the child's welfare,
- b. the nature of the complaint, and
- c. the names of the persons or agencies responsible for the allegations contained in the complaint.

2. Any investigation conducted by the Office of Advocate Defender pursuant to such information shall not duplicate and shall be separate from the investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigation of the Department having notice and hearing requirements.

3. At the request of the reporter, the Office of Advocate Defender shall keep the identity of the reporter strictly confidential from the operation of the Department, until the Advocate General determines what recommendations shall be made to the Commission for Human Services and to the Director of the Department of Human Services.

C. The Commission shall ensure that a person making a report in good faith under this section is not adversely affected solely on the basis of having made such report.

D. Any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation, pursuant to the provisions of this section, may be subject to loss of foster parent certification or licensure status.

SECTION 12. AMENDATORY Section 13, Chapter 389, O.S.L. 1997, as amended by Section 8, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7206.1), is amended to read as follows:

Section 7206.1 A. A statement of foster parent's rights shall include, but not be limited to, the right to:

1. Be treated with dignity, respect, and consideration as a professional member of the child welfare team;

2. Be given appropriate, ongoing education and continuing education and training ~~related to parental substitute authority and behavioral management~~ to develop and enhance foster parenting skills;

3. Be informed about ways to contact the state agency or the child-placing agency in order to receive information and assistance to access supportive services for any child in the foster parent's care;

4. Receive timely financial reimbursement for providing foster care services;

5. Be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;

6. Be provided a clear, written explanation of the individual treatment and service plan concerning the child in the foster parent's home, listing components of the plan pursuant to the provisions of the Oklahoma Children's Code and the Oklahoma Foster Care and Out-of-Home Placement Act;

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

8. Be notified of scheduled ~~permanency planning~~ review meetings concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child;

9. Provide input concerning the plan of services for the child and to have that input be given full consideration in the same manner as information presented by any other professional on the team;

10. Communicate with other foster parents in order to share information regarding the foster child. In particular, receive any information concerning the number of times a foster child has been moved and the reasons why, and the names and telephone numbers of the previous foster parent if the previous foster parent has authorized such release;

11. Communicate with other professionals who work with the foster child within the context of the team including, but not limited to, therapists, physicians, and teachers;

12. Be given, in a timely and consistent manner, any information regarding the child and the child's family which is pertinent to the care and needs of the child and to the making of a permanency plan for the child. Disclosure of information shall be limited to that information which is authorized by the provisions of Article V of the Oklahoma Children's Code for foster parents and Article VII of the Oklahoma Juvenile Code;

13. Be given reasonable notice of any change in or addition to the services provided to the child pursuant to the child's individual treatment and service plan;

14. a. Be given written notice of:

(1) plans to terminate the placement of the child with the foster parent pursuant to Section 7208 of this title, and

(2) the reasons for the changes or termination in placement, and

b. The notice shall be waived only in emergency cases pursuant to Section 7208 of this title;

15. Be notified by the court in a timely and complete manner of all court hearings, including notice of the date and time of any court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case;

16. Be informed of decisions made by the court, the state agency or the child-placing agency concerning the child;

17. Be considered as a preferred placement option when a foster child who was formerly placed with the foster parent is to reenter foster care at the same level and type of care, if that placement is consistent with the best interest of the child and other children in the foster parent's home;

18. Be provided a fair, timely, and impartial investigation of complaints concerning the foster parent's certification;

19. Be provided the opportunity to request and receive a fair and impartial hearing pursuant to Section 13 of this act regarding decisions that affect certification retention or placement of children in the home;

20. Be allowed the right to exercise parental substitute authority;

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

22. Be given the number of the statewide toll-free Foster Parent Hotline established in Section 7204 of this title; and

23. File a grievance and be informed of the process for filing a grievance.

B. The Department of Human Services, the Office of Juvenile Justice, and a child-placing agency under contract with the Department shall be responsible for implementing this section.

C. Nothing in this section shall be construed to create a private right of action or claim on the part of any individual, the Department of Human Services, the Office of Juvenile Justice or any child-placing agency.

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

A. 1. Pursuant to the provisions of this section, the Department of Human Services or the Department of Juvenile Justice may suspend or revoke the certification of any foster parent found to be in violation of any provision of the Oklahoma Child Care Facilities Licensing Act, the Oklahoma Foster Care and Out-of-Home Placement Act, the Oklahoma Child Abuse Reporting and Prevention Act or the rules of the Department.

2. a. Child-placing agencies may suspend or revoke the certification of any foster parent found to be in violation of any provision of the Oklahoma Child Care Facilities Licensing Act, the Oklahoma Foster Care and Out-of-Home Placement Act, the Oklahoma Child Abuse Reporting and Prevention Act or the rules of the Department.

b. In suspending or revoking the certification of a contract foster parent, a child-placing agency shall comply with the provisions of this section.

B. 1. No certification shall be suspended or revoked unless and until such time as the holder of such certification shall have been given at least fifteen (15) days' notice in writing of the grounds of such proposed suspension or revocation.

2. If such suspension or revocation is protested within thirty (30) days of receipt of said notice, by writing addressed to the Department, the Department shall conduct a hearing at which an opportunity shall be given to said foster parent to present testimony and confront witnesses.

3. Notice of such hearing shall be given to the foster parent by personal service or by delivery to the proper address by registered mail, at least two (2) weeks prior to the date thereof.

4. If notice of the proposed suspension or revocation is not so protested, the certification may thereupon be suspended or revoked.

C. 1. Nothing in this section shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. Whenever the Department finds, after an investigation, that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a foster parent, the Department may without notice or hearing require that such action be taken as it deems necessary to meet the emergency including, when necessary, removing children from the home of the foster parent pending a hearing on the matter.

a. On application to the Department, the foster parent shall be afforded a hearing within ten (10) days of the emergency removal of the child.

b. On the basis of such hearing, the Department shall suspend or revoke the certification, require the foster parent to correct deficiencies or return the foster child to the foster parent.

c. Any person aggrieved by such action after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. For the purposes of this subsection, the term "emergency" shall mean a situation that poses a direct and serious hazard to the health, safety or welfare of any foster child cared for by the foster parent.

D. 1. Any foster parent aggrieved by the decision of the Department pursuant to this section may, within ten (10) days after the suspension or revocation of a certification, appeal to the district court of the county in which the foster care home is

maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

2. The Department shall, within ten (10) days of the service of such notice, file with the clerk of said court a transcript of the proceedings had before it. The district court shall thereupon be vested with jurisdiction to review the proceedings of the Department; provided that, if the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed, and if the foster parent prevails, the judgment of the court shall be that the suspension or revocation be set aside. Pending the hearing of the appeal, the action of the Department suspending or revoking the certification shall be stayed; provided, after the filing of an appeal, the district court, upon application by the Department and after an appropriate hearing, may grant a restraining order to enforce the decision of the Department.

E. A foster parent is entitled to request a hearing pursuant to this section for nonplacement of any foster child in the home.

SECTION 14. AMENDATORY Section 8, Chapter 353, O.S.L. 1996, as last amended by Section 9, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7208), is amended to read as follows:

Section 7208. A. In making placements in foster care, the Department of Human Services, the Department of Juvenile Justice and any child-placing agency shall, if possible, arrange for a preplacement visit for any child five (5) years of age or older with the persons who will be providing foster care. Persons involved in the preplacement visits should make every effort to discuss with the child how the care, supervision, and guidance, including, but not limited to, parental substitute authority, shall be achieved.

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

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

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

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

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

3. The Department shall not prohibit or restrict a foster parent from submitting or presenting testimony concerning the child.

C. 1. When a child, under the jurisdiction of a court pursuant to the Oklahoma Children's Code, is placed in the custody of the Department of Human Services, or a child, under the jurisdiction of a court pursuant to the Juvenile Justice Code is placed in the custody of the Department of Juvenile Justice, or is placed in the custody of any child-placing agency, the state agency or child-placing agency shall have discretion to determine an appropriate foster placement for the child. ~~Except as provided in this section,~~

2. Pursuant to the Oklahoma Foster Care and Out-of-Home Placement Act, the state agency or child-placing agency may remove a child in its custody from a foster placement whenever the state agency or child-placing agency determines that removal is in the best interests of the deprived child, or the delinquent child or the

child in need of supervision, consistent with the state's interest in the protection of the public.

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

- a. the child has been moved once since the last court hearing, as provided in Section 7003-5.4a of this title, and
- b. a foster parent with whom the child has resided for more than six (6) months objects, in writing pursuant to the provisions of this subsection, after notice of the removal of the child by the state agency or the child-placing agency.

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

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

- a. substantial noncompliance by the foster parent with applicable foster family home standards and agreements,
- b. ~~pending an investigation of allegations of~~ indicating that abuse or neglect of the child by a foster parent or other person residing in the foster family home may have occurred, or

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

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

E. The Department of Human Services shall inform the court as to the reason why the foster child is being removed from the foster home. The Department of Human Services shall also inform the court as to the number of times a foster child has been moved within the foster family system.

F. The court, in the court record, shall explain the reasons why the removal of a foster child from the foster home is in the best interests of the foster child.

G. The Department of Human Services shall not remove the foster child from the foster home solely on the grounds that a foster parent has exercised ~~substitute~~ parental substitute authority.

SECTION 15. AMENDATORY Section 13, Chapter 353, O.S.L. 1996, as amended by Section 17, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7213), is amended to read as follows:

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

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

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

2. Prompt resolution of grievances within established time frames.

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

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

E. 1. Each foster parent shall have the right, without fear of reprisal or discrimination, to present grievances with respect to the providing of foster care services.

2. Each state agency shall promptly initiate a plan of corrective discipline including, but not limited to, dismissal of any agency employee or cancellation or nonrenewal of the contract of a child-placing agency determined by the state agency, through an investigation to have retaliated or discriminated against a foster parent who has:

a. filed a grievance pursuant to the provisions of this section,

b. provided information to any official or Department employee, or

c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or the child-placing agency.

3. The provisions of this paragraph shall not be construed to include any retaliatory complaint of the foster parent resulting from an administrative, civil or criminal action taken by the employee or child-placing agency for violations of law or rules, or contract provisions by the foster parent.

SECTION 16. AMENDATORY 10 O.S. 1991, Section 402, as last amended by Section 15, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 402), is amended to read as follows:

Section 402. As used in the Oklahoma Child Care Facilities Licensing Act:

1. "Child" or "minor" means any person who has not attained the age of eighteen (18) years;

2. "Child care facility" means any public or private residential facility, child placing agency, foster family home, group home, ~~day~~ child care center, part-day child care program, ~~or~~ family ~~day~~ child care home, or large family child care home, providing either full-time or part-time care for children away from their own homes, ~~and which is owned or controlled by a political subdivision, a corporation, an unincorporated organization or association, or individual;~~

3. "Child placing agency" means a child welfare agency licensed to place children in foster family homes, group homes or adoptive homes;

4. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours;

5. "Foster family home" means ~~a family home, other than the home of a parent, stepparent, grandparent, brother, sister, uncle, or aunt, which provides full-time care for five or fewer children~~ the private residence of a family which provides foster care services to a child. Such term shall include a foster family home, a specialized foster home, a therapeutic foster family home, or a kinship care home;

6. "Foster parent eligibility assessment" includes a criminal background investigation, including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Department of Juvenile Justice, or any child-placing agency pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act. A foster parent eligibility assessment shall be similar to the procedures used by the Oklahoma Department of Public Safety for determining suitability of an individual for employment as a highway patrol officer;

7. "Group ~~homes~~ home" means ~~homes~~ a home providing full-time care and community-based services for more than five children but less than thirteen;

8. "~~Day~~ Large family child care home" means ~~the provision of a residential family home which provides care and supervision of a child who resides in its own home or with relatives but is in the care of another person~~ for eight to twelve children for part of the twenty-four-hour day ~~who is conducting a family day care home or persons conducting a day care center~~;

9. "Family ~~day~~ child care home" means a ~~licensed or approved~~ family home which provides care and ~~protection~~ supervision for seven or fewer children for part of the twenty-four-hour day. The term "family ~~day~~ child care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home;

10. "~~Day~~ Child care center" means a ~~licensed or approved~~ facility which provides care and supervision for ~~eight or more~~ children and which operates for more than thirty (30) hours per week. The term "~~day~~ child care center" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home;

11. "Part-day child care program" means a ~~licensed~~ facility which provides care and supervision for ~~eight or more~~ children and which operates for more than fifteen (15) but less than thirty (30) hours per week;

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

13. "Commission" means the Commission for Human Services, the policy-making and general supervisory body of the Department; and

14. "Division" means the division of the Department of Human Services of the State of Oklahoma assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 17. AMENDATORY 10 O.S. 1991, Section 405, as amended by Section 5, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 405), is amended to read as follows:

Section 405. A. 1. No child care facility may be operated or maintained in this state, unless licensed or temporarily authorized by the Department of Human Services; provided, that the Department shall not be required to be licensed, but shall be bound by the standards it prescribes.

2. No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that such facility will meet minimum standards for a license to operate.

3. The incorporation or domestication of a corporation organized for the purpose of operating a child care facility shall not exempt such corporation from compliance with the provisions of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act.

B. An application for a license shall be made on forms provided by the Department and in the manner prescribed. ~~Before issuing such license,~~ Temporary authorization may be granted to allow the Department ~~shall~~ to investigate the activities and standards of care of the applicant and if satisfied that the applicant meets the

requirements as provided in ~~this act~~ the Oklahoma Child Care Facilities Licensing Act, a license shall be issued.

C. A provisional license may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules ~~and regulations~~ of the Department, as provided in Section 404 of this title.

D. All licenses shall be in force for two (2) years from the month of issuance unless revoked as authorized by Section 408 of this title, and may be reissued biennially on application, except that a provisional license may be in force for not more than one (1) year from the date of issuance, unless such emergency exists as, in the discretion of the Department, necessitates an extension thereof.

SECTION 18. AMENDATORY 10 O.S. 1991, Section 406, as last amended by Section 2, Chapter 222, O.S.L. 1995 (10 O.S. Supp. 1998, Section 406), is amended to read as follows:

Section 406. A. The Department of Human Services shall have authority at any reasonable time to investigate and examine the conditions of any child care facility in which a licensee or applicant hereunder receives and maintains children, and shall have authority at any time to require the facility to provide information pertaining to children in its care.

B. 1. The State Department of Health may visit any licensee or applicant at the request of the Department to advise on matters affecting the health of children and to inspect the sanitation of the buildings used for their care.

2. The State Fire Marshal may visit any licensee or applicant at the request of the Department to advise on matters affecting the safety of children and to inspect the condition of the buildings used for their care.

C. 1. Upon receipt of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this~~

~~title,~~ or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department shall:

- a. document the complaint,
- b. provide a written copy of the complaint to the facility involved, and
- c. document the facility's plan for correcting the alleged violations.

2. When the Department determines that there has been a violation and that the violation has a direct impact on the health, safety or well-being of one or more of the children cared for by the facility, the Department shall require immediate correction of the violation.

3. The notice shall include notice that failure to correct the violation can result in the revocation of the license ~~of the facility,~~ refusal to issue or renew a license or the filing of an injunction pursuant to Section 409 of this title, ~~or both.~~

4. If the facility refuses to correct the violation or fails to complete the plan of correction, the Department may initiate proceedings to revoke the license ~~of the facility,~~ refuse to issue or renew a license, and request an injunction, ~~or both.~~

D. Upon the completion of the investigation of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall clearly designate its findings on the first page of the report of the investigation. The findings shall state whether the complaint was substantiated or unsubstantiated.

E. Information obtained by the Department or the Office of Child Care from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be accessible to anyone except as herein provided, unless upon order of a court of competent jurisdiction.

SECTION 19. AMENDATORY 10 O.S. 1991, Section 407, as amended by Section 7, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 407), is amended to read as follows:

Section 407. A. The Department of Human Services may revoke the license or refuse to issue or renew a license of any child care facility found to be in violation of any provision of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act or the rules of the Department, as provided in Section 404 of this title.

B. 1. No license shall be revoked or issuance or renewal refused unless and until such time as the ~~holder of such license~~ licensee or applicant shall have been given at least thirty (30) days' notice in writing of the grounds of such proposed revocation or refusal.

2. At the time the facility is given notice in writing of the revocation of license or refusal to issue or renew, the Department shall also advise parents of children attending the facility of such action by written notification and the posting of an announcement in the facility.

3. If such revocation or refusal is protested within thirty (30) days of receipt of said notice, by writing addressed to the Commission for Human Services, the Commission, or its authorized agency, shall conduct a hearing at which an opportunity shall be given to said licensee or applicant to present testimony and confront witnesses.

4. Notice of such hearing shall be given to said licensee or applicant by personal service or by delivery to the proper address

by registered mail, at least two (2) weeks prior to the date thereof.

5. If notice of the proposed revocation or refusal is not so protested, the license may thereupon be revoked or renewal thereof refused.

C. 1. Nothing in this section or Section 406 of this title shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. Whenever the Department finds, after an investigation, that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a facility licensed or authorized pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency including, when necessary, removing children from the facility and prohibiting the facility from providing services to children pending a hearing on the matter.

- a. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately, but on application to the Department, shall be afforded a hearing within ten (10) days of receipt of said notice.
- b. On the basis of such hearing, the Department shall continue such order in effect, revoke it, or modify it.
- c. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except

criminal cases. For the purposes of this subsection, the term "emergency" shall mean a situation that poses a direct and serious hazard to the health, safety or welfare of any child cared for by the facility.

SECTION 20. AMENDATORY 10 O.S. 1991, Section 408, as amended by Section 8, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 408), is amended to read as follows:

Section 408. A. Any licensee or applicant aggrieved by the decision of the Department of Human Services under Sections 405 or 407 of this title may, within ten (10) days after the revocation or refusal to issue or renew the license, appeal to the district court of the county in which the child care facility is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

B. The Department shall, within ten (10) days of the service of such notice, file with the clerk of said court a transcript of the proceedings had before it. The district court shall thereupon be vested with jurisdiction to review the proceedings of the Department; provided that, if the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed, and if the licensee or applicant prevails, the judgment of the court shall be that the revocation be set aside or the license issued or renewed, as the case may be. Pending the hearing of the appeal, the action of the Department revoking or refusing issuance or renewal of the license or the granting thereof shall be stayed; provided, after the filing of an appeal, the district court, upon application by the Department and after an appropriate hearing, may grant a restraining order to enforce the decision of the Department.

SECTION 21. AMENDATORY 10 O.S. 1991, Section 21.1, as amended by Section 1, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1998, Section 21.1), is amended to read as follows:

Section 21.1 A. ~~Custody~~ Except as otherwise provided by this section and by law, 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. The person in whose home the child has been living in a wholesome and stable environment;

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

~~4.~~ 5. 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 court may deny the custody or guardianship only if:

1. The noncustodial parent, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the death of the custodial parent, has willfully failed, refused, or neglected to contribute to the support of ~~the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action~~ such minor:

a. 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~~ an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

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

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

2. The noncustodial parent has abandoned the child; 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. 1. It is presumed to be in the best interest of a child for a grandparent of the child to receive custody of the child if:

- a. the child is abandoned and left in the physical custody of the grandparent by a parent or the parents of the child with no physical contact between the parents and the child for one (1) year or more, or
- b. the custodial parent or parents have, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding any petition for custody of the child, willfully failed, refused or neglected to contribute to the support of such minor:

- (1) in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
- (2) according to such parent's financial ability to contribute to such child's support if no provision for support is provided in an order.

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child.

2. Such custody shall be by operation of law or by order of a court of competent jurisdiction.

D. 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.~~ E. 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.~~ F. 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 22. AMENDATORY 10 O.S. 1991, Section 26, as amended by Section 44, Chapter 415, O.S.L. 1998, and as renumbered by Section 51, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7202.1), is amended to read as follows:

Section 7202.1 A. No person, other than the parents, or persons related to the child within the third degree of the child, the Department of Human Services, or a child-placing agency, may accept the permanent care and custody of a child except in accordance with the decree of a court of competent jurisdiction or as otherwise provided by the Oklahoma Children's Code, the Oklahoma Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.

B. A child whose care and custody has been surrendered pursuant to the provisions of this section may not be recovered by the parents or other person who relinquished the child except through order of a court of competent jurisdiction, based on a finding that such order returning the child is in the best interests of the child.

SECTION 23. AMENDATORY 43 O.S. 1991, Section 112, as last amended by Section 7, Chapter 323, O.S.L. 1998 (43 O.S. Supp. 1998, Section 112), is amended to read as follows:

Section 112. A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be filed with all child support orders.

B. In any action in which there are minor unmarried children in awarding the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

- a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and
- b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. In making an order for custody, the court may specify that:

a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if the parent plans to change the permanent residence of the child, and

b. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

D. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents. The term "legitimate interest" shall be broadly construed to accommodate the best interests of the child.

E. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, the child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support

through the age of eighteen (18) if the child is regularly and continuously attending high school.

~~E.~~ F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money has been provided by the Department of Human Services for the benefit of each child. If public assistance money has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes and for the just adjudication and establishment of current child support.

~~F.~~ G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of any arrearages of child support.

SECTION 24. This act shall become effective July 1, 1999.

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.

Passed the House of Representatives the 24th day of February, 1999.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1999.

President of the Senate