STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO.1461 By: Greenwood

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 403, as last amended by Section 3, Chapter 386, O.S.L. 1998 (10 O.S. Supp. 1998, Section 403), which relates to the Oklahoma Child Care Facilities Licensing Act; adding to list of exceptions; Section 6, Chapter 353, O.S.L. 1995, as last amended by Section 14, Chapter 416, O.S.L. 1998; Section 8, Chapter 353, O.S.L. 1995, as amended by Section 16, Chapter 416, O.S.L. 1998 (10 O.S. Supp. 1998, Sections 7106 and 7108), which relate to the Oklahoma Child Abuse Reporting and Prevention Act; requiring parental notification of certain interviews; providing for content; requiring time limitation for certain notices relating to child abuse investigations; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 403, as last amended by Section 3, Chapter 386, O.S.L. 1998 (10 O.S. Supp. 1998, Section 403), is amended to read as follows:

Section 403. A. The provisions of the Oklahoma Child Care Facilities Licensing Act shall not apply to:

1. Care provided in the child's own home or by relatives;

2. Informal arrangements which parents make with friends or neighbors for the occasional care of their children;

3. Programs in which school-aged children are participating in home-schooling;

4. Programs operated during typical school hours by a public school district;

5. Programs operated during typical school hours by ~~a~~ private ~~school~~ schools that ~~offers~~ offer elementary education in grades kindergarten through third grade;

6. Before-school and after-school programs operated by private schools;

7. Summer programs operated by private schools;

~~6.~~ 8. Summer youth camps for children at least five (5) years of age that are accredited by the American Camping Association or other national standard-setting agency or church camp accreditation program;

~~7.~~ 9. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;

~~8.~~ 10. A program of specialized activity or instruction for children that is not designed or intended for child care purposes including, but not limited to, scouts, 4-H clubs and summer resident youth camps, and single-activity programs such as academics, athletics, gymnastics, hobbies, art, music, dance and craft instruction;

~~9.~~ 11. Nursery schools, kindergartens or other facilities whose purpose is primarily educational, recreational or medical and which operate part-day child care programs which provide care and supervision for eight (8) or more children for fifteen (15) or less hours per week;

~~10.~~ 12. Facilities whose primary purpose is medical treatment; or

~~11.~~ 13. Day treatment programs and maternity homes operated by a licensed hospital.

B. 1. The provisions of the Oklahoma Child Care Facilities Licensing Act, shall be equally incumbent upon all private and public child care facilities.

2. Any institution furnishing full-time care for children for ten (10) years prior to the effective date of this act shall, upon written notification to the Department of Human Services, be exempted from the provisions of the Oklahoma Child Care Facilities

Licensing Act, if it is not receiving any state or federal funds for furnishing food, clothing, shelter, or upkeep for such children.

3. Any institution being operated by a war veterans' organization and furnishing full-time care for children on the effective date of this act shall be exempted from the provisions of the Oklahoma Child Care Facilities Licensing Act, regardless of whether it is receiving state or federal funds.

SECTION 2. AMENDATORY Section 6, Chapter 353, O.S.L. 1995, as last amended by Section 14, Chapter 416, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7106), is amended to read as follows:

Section 7106. A. 1. Any county office of the Department of Human Services receiving a child abuse or neglect report as provided in Section 7103 of this title shall promptly respond to the report by initiating an investigation of the report or an assessment of the family in accordance with priority guidelines established by the Department of Human Services. The Department may assign priorities to reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child. The Department shall adopt the priority system pursuant to rules promulgated by the Commission for Human Services. The primary purpose of the investigation or assessment shall be the protection of the child.

2. The Department, when feasible, shall designate certain staff in each county office to only handle reports requiring an investigation and shall designate other staff to conduct assessments in response to reports which do not require an investigation. In county offices of the Department where an Integrated Family Services Program exists, the Department shall utilize such program staff to assist in linking families who have agreed to accept such services with prevention and intervention-related services, and to assist in the development of such services within the community.

3. If an investigation or assessment conducted by the Department of Human Services in response to any report of child

abuse or neglect shows that the incident reported was the result of the reasonable exercise of parental discipline as defined in Section 844 of Title 21 of the Oklahoma Statutes, the investigation or assessment will proceed no further. If such incident was the result of the reasonable exercise of parental discipline, all records regarding the incident shall be expunged.

B. As necessary to complete a thorough investigation or assessment, the county office or the Department shall determine:

1. The nature, extent and cause of the abuse or neglect, if applicable;

2. The identity of the person responsible for the abuse or neglect, if applicable;

3. The names and conditions of any other children in the home;

4. An evaluation of the parents or persons responsible for the care of the child;

5. The adequacy of the home environment;

6. The relationship of the child to the parents or persons responsible for the care of the child;

7. Any service needs of the child and the parents or persons responsible for the care of the child and any other children in the home to reduce the potential for abuse and neglect; and

8. All other pertinent data.

C. 1. The investigation or assessment shall include a visit to the child's home, unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith, and shall also include an interview with and examination of the subject child. The interview with and examination of the child may be conducted at any reasonable time and at any place, including, but not limited to, the child's school. ~~It shall be the responsibility of the~~ The Department of Human Services ~~to~~ shall notify the parents of a child who has been interviewed ~~at a school~~.

2. The Department shall notify such parent not later than twenty-four (24) hours after the interview was conducted. If the notification was oral, the parents shall be mailed written notification of the interview detailing the date and time of the interview, the questions asked by the person conducting the interview, and the names of individuals present at the interview. The investigation or assessment may include an interview with the child's parents or any other person responsible for a child's health or welfare and an interview with and examination of any child in the home.

~~2.~~ 3. The investigation or assessment may include a medical, psychological, or psychiatric examination of any child in that home. If admission to the home, school, or any place where the child may be located cannot be obtained, then the district court having jurisdiction, upon application by the district attorney and upon cause shown, shall order the parents or other persons responsible for the health or welfare of the child, or the person in charge of any place where the child may be located, to allow entrance for the interview, the examination and the investigation or assessment. If the parents or other persons responsible for the child's health or welfare do not consent to a medical, psychological or psychiatric examination of the child that is requested by the county office or the Department, the district court having jurisdiction, upon application by the district attorney and upon cause shown, shall order the examination to be made at the times and places designated by the court. As necessary in the course of conducting an investigation, the Department may request and obtain, without a court order, copies of the prior medical records of a child including, but not limited to, hospital records and medical and dental records. The physician-patient privilege shall not constitute grounds for failure to produce such records.

~~3.~~ 4. The investigation or assessment may include an inquiry into the possibility that the child, a parent or a person responsible for the child's health or welfare has a history of mental illness. If a parent or person responsible for the child's health or welfare does not allow the county office or the Department to have access to mental health records or treatment plans, requested by the county office or the Department, which may relate to the abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, shall by order allow the county office or the Department to have access to the records pursuant to terms and conditions prescribed by the court.

~~4.~~ 5. a. If the court determines that the parent or person responsible for the child's health or welfare is indigent, the court shall appoint an attorney to represent the parent or person responsible for the child's health or welfare at the hearing to obtain mental health records.

b. A parent or person responsible for the child's health or welfare is entitled to notice and a hearing when the county office or the Department seeks a court order to allow a medical, psychological or psychiatric examination or access to mental health records.

c. Access to mental health records does not constitute a waiver of confidentiality.

~~5.~~ 6. The investigation of a report of sexual abuse or serious physical abuse or both sexual abuse and serious physical abuse shall be conducted, when appropriate and possible, using a multidisciplinary approach.

D. The Department shall conduct an assessment in response to reports initially referred for an investigation, if it is determined that a complete investigation is not required.

E. The Department shall immediately commence an investigation if it is determined, at any time during the assessment process, that an investigation is warranted as provided for in the priority guidelines established by the Department.

F. If, before the investigation is complete, the opinion of the child protective services worker is that immediate removal of the child is necessary to protect the child from further abuse or neglect, the child protective services worker shall recommend that the child be taken into custody pursuant to the Oklahoma Children's Code.

G. The county office shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

H. The Department shall identify prevention and intervention-related services available in the community and arrange for such services to be provided to the family when an investigation or assessment indicates the family would benefit from such services, or the Department may provide such services directly. The Department shall thoroughly document in the record its attempts to provide, or arrange for the provision of, voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family continues to refuse voluntary services, and it is determined by the child protective services worker that the child needs to be protected, the Department may initiate an investigation.

I. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the preliminary inquiry or investigation of a child abuse or neglect report shall comply with the provisions of Section 7003-1.1 of this title.

J. If the Department has reason to believe that a parent of the child or other person may remove the child from the state before the investigation is completed, the Department may request the district

attorney to file an application for a temporary restraining order in any district court in the State of Oklahoma without regard to continuing jurisdiction of the child. After a hearing on the application, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from the state pending completion of the investigation if the court finds that the county office or the Department has probable cause to conduct the investigation.

SECTION 3. AMENDATORY Section 8, Chapter 353, O.S.L. 1995, as amended by Section 16, Chapter 416, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7108), is amended to read as follows:

Section 7108. A. ~~As soon as possible~~ If a child is taken into emergency or protective custody by a peace officer or employee of the court pursuant to the Oklahoma Children's Code, written notice shall be provided to the parent, legal guardian or custodian of the child pursuant to Section 7003-2.4 of this title.

B. Within twenty-four (24) hours after initiating an investigation of a parent or other person having responsibility for the health or safety of the child pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the child protective services worker shall provide to the parent or person a brief and easily understood written description of the investigation process. Such notice shall include:

1. A statement that the investigation is being undertaken by the Department of Human Services pursuant to the requirements of the Oklahoma Child Abuse Reporting and Prevention Act in response to a report of child abuse or neglect;

2. A statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the Department since the report could have been made anonymously;

3. A statement that the investigation is required by law to be conducted in order to enable the Department of Human Services to

identify incidents of abuse or neglect in order to provide protective services to the child or preventive social services to families who are in need of such services;

4. A statement that, upon completion of the investigation, the parent or other person will receive a letter from the Department which will inform such parent or other person:

a. that the Department has found insufficient evidence of abuse or neglect, or

b. that there appears to be probable cause to suspect the existence of child abuse or neglect in the judgment of the Department;

5. An explanation of the procedures of the Department of Human Services for conducting an investigation of alleged child abuse or neglect, including:

a. a description of the circumstances under which the Department would seek to remove the child from the home through the judicial system, and

b. an explanation that the law requires the Department to refer all reports of alleged ~~criminal~~ child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

6. The procedures to follow if there is a complaint regarding the actions of the Department or to request a review of the findings made by the Department during or at the conclusion of the investigation;

7. The person's right to review all records filed with the court concerning the investigation, provided the review shall not include the name of the person who filed the report specified in Section 7103 of this title, and provided the review would not jeopardize an ongoing ~~criminal~~ investigation or adjudicatory hearing;

8. The person's right to seek legal counsel;

9. References to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

10. The process the person may use to acquire access to the child if the child is removed from the home.

~~B.~~ C. ~~If~~ Except as otherwise required by subsections A and B of this section, if the Department determines that a family assessment may be needed, the Department shall, at the time of the initial contact, provide the parent of the child with the following information:

1. The purpose of the contact with the family;

2. The name of the child protective services worker responding and such person's office telephone number; and

3. The assessment process to be followed during the Department's intervention with the family including the possibility that the family may be referred for prevention or intervention-related services and that the family may be expected to participate in such services.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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