

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1185

By: Greenwood

COMMITTEE SUBSTITUTE

An Act relating to marriage and family and children; amending 43 O.S. 1991, Section 112.2, which relates to domestic abuse and visitation; requiring reporting of child abuse by the court; requiring certain investigation and reports; making certain false reports unlawful; providing penalty; making false reports consideration for custody or change of custody; amending 10 O.S. 1991, Section 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7001-1.3), which relates to the Oklahoma Children's Code; modifying definition of deprived child; and declaring an emergency.

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

SECTION 1. AMENDATORY 43 O.S. 1991, Section 112.2, is amended to read as follows:

Section 112.2 A. 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.

B. 1. If the evidence in an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child, for the appointment of a guardian of the person of a child, for habeas corpus, or in subsequent proceedings in such actions, indicates that a child is or may be abused, the referring court shall notify the

appropriate county office of the Department of Human Services that the child may be a victim of abuse.

2. The Department shall conduct an assessment or investigation concerning such report in accordance with priority guidelines established by the Department of Human Services pursuant to the Oklahoma Child Abuse Reporting and Prevention Act.

3. The Department shall submit all reports regarding the assessment or investigation to the office of the district attorney and send a copy of its reports to such court within thirty (30) days of such notice, and notify parties to the proceeding of the submission of the report to the court.

4. The district attorney shall advise the court within three (3) business days of the receipt of the Department's findings whether a deprived petition will be filed by that office. If no deprived petition is filed, the court may take appropriate action regarding the custody of the child, or appointment of a guardian for the child.

C. Nothing in this section shall preclude the referring court from entering an order to have the child taken into emergency custody if evidence presented to the referring court indicates a child is in surroundings that are such as to endanger the welfare of the child. If a child is taken into emergency custody by such an order, the provisions of Article III of the Oklahoma Children's Code shall apply.

D. 1. Any person who knowingly and willfully makes a false child abuse report pursuant to the provisions of this section or a report that the person knows, or should know, lacks factual foundation may be reported by the Department of Human Services or by the court to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

2. If a court determines that an accusation of child abuse made during a child custody proceeding is false and the person making the

accusation knew, or should have known, it to be false at the time the accusation was made, the court may impose a fine for contempt of court, not to exceed Ten Thousand Dollars (\$10,000.00) and reasonable attorney fees and court costs incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

3. In addition, the court shall consider the false allegations of child abuse in determining custody of the child.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7001-1.3), is amended to read as follows:

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

1. "Abandoned infant" means a child who is twenty-four (24) months of age or younger whose parent:
 - a. has willfully left the infant alone or in the care of another who is not the parent of the infant without identifying the infant or furnishing any means or methods of identification,
 - b. has willfully left the infant alone or in the care of another who is not the parent of the infant and expressed a willful intent by words, actions, or omissions not to return for the infant,
 - c. has knowingly placed or knowingly allowed the infant be placed in or remain in conditions or surroundings that posed or constituted a serious danger to the health and safety of the infant thereby demonstrating wanton disregard for the child's well-being,
 - d. is a father, or a putative father if the infant was born out of wedlock, and:

- (1) if an infant is less than ninety (90) days of age, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy,
- (2) (a) if an infant is older than ninety (90) days but less than fourteen (14) months of age, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the infant to the extent of his financial ability, which may include contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy.

(b) Failure to contribute to the support of the mother during her term of pregnancy, pursuant to this subdivision, shall not in and of itself be grounds for termination of the parental rights of the father or putative father, or
- (3) (a) if the infant is fourteen (14) months of age or older, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the infant to the extent of his financial ability.

(b) Pursuant to this subdivision, failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for termination of the parental rights of the father or putative father.

In any case where a father, or a putative father of an infant born out of wedlock, claims that prior to the receipt of notice of the hearing provided for in Section 7006-1.2 of this title he had been specifically denied knowledge of the infant or denied the opportunity to exercise parental rights or duties with regard to the infant, such father or putative father shall prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a child or made sufficient attempt to exercise parental rights or duties with regard to the infant prior to the receipt of notice,

e. has not had significant or meaningful contact with the infant during the six (6) months immediately prior to out-of-home placement or the six (6) continuous months while in out-of-home placement, and has not made meaningful efforts to gain or regain custody of or to have regular visitation with the infant, despite being given the opportunity to do so.

Incidental or token visits, communications or contributions shall not be construed or considered in establishing the proper exercise of parental rights or duties with regard to the infant;

2. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Part 3 of Article III of this Code are supported by the evidence and whether a child should be adjudged to be a ward of the court;

3. "Assessment" means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat to a child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:

- a. an evaluation of the child's safety, and
- b. a determination regarding the family's need for services;

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

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

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

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

8. "Chronic abuse or chronic neglect of a child" means a pattern of physical or sexual abuse or neglect which is repeated or continuing;

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

10. "Court-appointed special advocate" or "CASA" means a responsible adult who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who has volunteered to be available for appointment by the court to serve as an officer of the court as a guardian ad litem, pursuant to the provisions of Section 7003-3.7 of this title, to represent the best interests of any deprived child or child alleged to be deprived over whom the district court exercises jurisdiction, until discharged by the court;

11. "Court-appointed special advocate program" means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent, not-for-profit corporation or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem, to represent the best interests of a deprived child or a child alleged to be deprived in a case for which a deprived petition has been filed;

12. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or

residential child care facility. Day treatment programs include, but are not limited to, educational services;

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

14. "Deprived child" means a child:

- a. who is for any reason destitute, homeless, or abandoned,
- b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, abuse, cruelty, or depravity on the part of the child's parents, legal guardian, or other person responsible for the child's health or welfare,
- c. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk for future exposure to such substances,
- d. who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of the child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment

- shall be necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,
- e. who is, due to improper parental care and guardianship, absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance, ~~or~~
 - f. whose parent, legal guardian or custodian for good cause desires to be relieved of custody, or
 - g. who is an unborn viable child whose mother tests positive to alcohol or to a controlled dangerous substance and the health or life of the unborn viable child is determined to be at risk due to the exposure.

Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, legal guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

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

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

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

16. "Emergency custody" means the custody of a child prior to adjudication of the child following issuance of an order of the

district court pursuant to Section 7003-2.1 of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 7003-2.4 of this title;

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

18. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child in foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent;

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

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

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

22. "Foster parent" means any individual maintaining a foster family home, who is responsible for the care, supervision, guidance and rearing of and other foster care services provided to a foster child;

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

24. "Guardian ad litem" means a person appointed by the court to protect the best interests of a child pursuant to the provisions of Section 7003-3.7 of this title in a particular case before the court;

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

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

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

28. "Investigation" means an approach utilized by the Department to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, constitute a serious and immediate threat to a child's health or safety. An investigation includes, but is not limited to, the following elements:

- a. an evaluation of the child's safety,
- b. a determination whether or not child abuse or neglect occurred, and
- c. a determination regarding the family's need for prevention and intervention-related services;

29. "Kinship care" means full-time care of a child by a kinship relation;

30. "Kinship guardianship" means a judicially created relationship between a child and a kinship relation of the child

established pursuant to the provisions of Section 7003-5.5 of this title;

31. "Kinship relation" or "kinship relationship" means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child;

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

33. "Multidisciplinary child abuse team" means any team established pursuant to Section 7110 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse;

34. "Near death" means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

35. "Neglect" means neglect as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act;

36. "Out-of-home placement" means a placement, other than a placement in the home of the parent, legal guardian or custodian from whose custody the court has removed the child;

37. "Permanency hearing" means a hearing by the court to determine whether a child is to be returned to the child's home or whether other permanent placement will be sought within a specific time frame for the child;

38. "Permanent custody" means a court-ordered custody of an adjudicated deprived child whose parent's parental rights have been terminated;

39. "Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; custodian; a foster

parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

40. "Protective custody" means custody of a child taken pursuant to Section 7003-2.1 of this title;

41. "Putative father" means the father of a child:

- a. born out of wedlock, or
- b. whose mother was married to another person at the time of the birth of such child or within ten (10) months prior to the birth of the child.

The term "putative father" includes, but is not limited to:

- (1) a man who has acknowledged or claims paternity of the child,
- (2) a man named as the father by the mother of the child, or
- (3) any man alleged to have engaged in sexual intercourse with the mother during a possible time of conception;

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

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

44. "Reasonable efforts" means the reasonable exercise of diligence and care, with regard to a child who is in out-of-home placement, or who is at imminent risk of being harmed, to:

- a. refer to, arrange for, or develop reasonable supportive and rehabilitative services for the family of such child that are required both to prevent unnecessary placement of the child outside of the child's home and to foster, whenever appropriate, the safe reunification of such child with the child's family, or
- b. place a child who cannot be returned home into a permanent placement;

45. a. "Residual parental rights and responsibilities" means those rights and responsibilities that remain with the parent:

- (1) after transfer of legal custody of the child, other than adoption, or
 - (2) when a guardianship or kinship guardianship is established for the child.
- b. Residual parental rights and responsibilities may be limited or restricted as determined by the court, and include, but are not limited to:
- (1) the right of visitation,
 - (2) the right to consent to adoption,
 - (3) the responsibility for support of and costs of medical care for the child, and
 - (4) the right to determine the religious faith of the child;

46. "Responsible adult" for purposes of the release of a child from protective custody, means a stepparent, foster parent, a relative of the child who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or

safeguard the child in another person's absence who is eighteen (18) years of age or older;

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

48. "Serious bodily injury" means a bodily injury that involves:

- a. substantial risk of death,
- b. extreme physical pain,
- c. protracted and obvious disfigurement, or
- d. protracted loss or impairment of the function of a bodily member, organ or mental faculty;

49. "Serious danger to the health and safety" means that without the intervention of another person or agency, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;

50. "Sibling" means a biologically or legally related brother or sister of a child;

51. "Specialized foster care" means foster care provided to a child in a specialized foster home or agency-contracted home which:

- a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,
- b. is monitored by the Division, and
- c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

52. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

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

54. "Torture" means to inflict:

- a. intense emotional or psychological anguish to or suffering by a child, or
- b. physical pain for the purpose of coercing or terrorizing a child;

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

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

57. "Treatment and service plan" means a document written pursuant to Section 7003-5.3 of this title; and

58. "Voluntary foster care placement" means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child's parent, legal guardian or custodian.

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

SECTION 3. 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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