

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1298

By: Gilbert

COMMITTEE SUBSTITUTE

An Act relating to children; amending Section 1, Chapter 396, O.S.L. 1999, as amended by Section 1, Chapter 374, O.S.L. 2000, Section 2, Chapter 396, O.S.L. 1999, as amended by Section 2, Chapter 374, O.S.L. 2000, Section 3, Chapter 396, O.S.L. 1999, as amended by Section 3, Chapter 374, O.S.L. 2000, Section 4, Chapter 396, O.S.L. 1999, as amended by Section 4, Chapter 374, O.S.L. 2000, Section 5, Chapter 396, O.S.L. 1999, Section 38, Chapter 374, O.S.L. 2000 and Section 10, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 2000, Sections 7007-1.1, 7007-1.2, 7007-1.3, 7007-1.4, 7007-1.5, 7004-1.6 and 7210), which relate to the Oklahoma Children's Code; amending 10 O.S. 1991, Section 1116.4, as amended by Section 3, Chapter 72, O.S.L. 1993 (10 O.S. Supp. 2000, Section 1116.4), which relates to delinquent, dependent and disabled children; extending date of termination for the Child Welfare System Reform Review Committee; updating language; adding and deleting certain purposes; deleting, modifying and adding terms; removing out-of-date language; providing for certain information; adding certain items to the Independent Living Act; specifying purposes; providing for eligibility; making certain eligible individuals eligible for certain Medicaid services and housing; specifying certain conditions in the recruitment of foster and adoptive parents for certain children in foster care; updating language; providing certain opportunities for certain persons to become foster or adoptive parents; setting conditions for certain placement or adoption of certain children; establishing the Judicial Coordination Advisory Study Panel; providing termination date; specifying purpose; providing for certain plan; providing for certain grant funding application for certain entities; providing for membership, appointments and qualifications; setting certain time limits; providing for appointments of cochairs; providing for vacancies; providing for meetings; providing for duties and responsibilities; requiring a report; providing for staffing; providing for travel reimbursement; providing for immunity from civil liability for postadjudication review board members; amending 10 O.S. 1991, Sections 402, as last amended by Section 1, Chapter 233, O.S.L. 1999, 403, as last amended by Section 6, Chapter 385, O.S.L. 2000, 404.1, as last amended by Section 1, Chapter 177, O.S.L. 2000, 405, as last amended by Section 1, Chapter 130, O.S.L. 1999, 406, as last amended by

Section 2, Chapter 130, O.S.L. 1999, 407, as last amended by Section 3, Chapter 130, O.S.L. 1999, 408, as last amended by Section 4, Chapter 130, O.S.L. 1999, 410 and 412 (10 O.S. Supp. 2000, Sections 402, 403, 404.1, 405, 406, 407 and 408), which relate to the Oklahoma Child Care Facilities Licensing Act; adding definition; adding to requirements for boarding schools; clarifying which boarding schools are exempt; providing certain conditions; clarifying and updating language; providing for nonexpiring licenses; clarifying disclosure of certain information in certain situations; clarifying emergency hearings and orders; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 396, O.S.L. 1999, as amended by Section 1, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7007-1.1), is amended to read as follows:

Section 7007-1.1 A. The Legislature hereby establishes to continue until June 30, ~~2001~~ 2002, the Child Welfare System Reform Review Committee. The Committee shall undertake a thorough study of the policies, procedures and statutes governing Oklahoma's child abuse and child welfare system and shall recommend necessary revisions to this system.

B. All departments, officers, agencies and employees of this state shall cooperate with the Child Welfare System Reform Review Committee in carrying out its duties and responsibilities, including providing any information, records and reports as may be requested by the Committee.

SECTION 2. AMENDATORY Section 2, Chapter 396, O.S.L. 1999, as amended by Section 2, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7007-1.2), is amended to read as follows:

Section 7007-1.2 A. The Child Welfare System Reform Review Committee shall consist of ~~the following~~ twenty-two (22) members including:

1. One member who is the Chair of the Human Services Committee of the Oklahoma House of Representatives;

2. One member who is the Chair of the Human Resources Committee of the Oklahoma State Senate;

3. Three members who are judges having juvenile docket responsibilities, appointed by the Juvenile Justice Oversight Committee of the Supreme Court;

4. Two members who are district attorneys having knowledge and experience in actions concerning deprived children, appointed by the District Attorneys Council;

5. One member who serves on a post-adjudication review board, appointed by the State Post-Adjudication Review Advisory Board;

6. One member who serves as a foster parent and who has a current contract with the Department of Human Services to provide foster care services, appointed by the Foster Care Association of Oklahoma;

7. One member who serves as a Court-Appointed Special Advocate, appointed by the Oklahoma CASA Association;

8. Three members appointed by the Speaker of the House of Representatives of whom:

a. one member represents a child-placing agency that has a current contract with the Department of Human Services to provide foster care services,

b. one person is a child advocate having current knowledge and experience concerning Oklahoma's child welfare system, and

c. one person represents a local unit on aging interested in grandparents' concerns;

9. Three members appointed by the President Pro Tempore of the Senate of whom:

a. one person is a member of the Governor's Task Force on Children in Custody,

- b. one person is a child advocate having current knowledge of Oklahoma's child welfare system, and
- c. one person is a practicing attorney in the area of child welfare and who is an active member of the Family Law Section of the Oklahoma Bar Association;

10. Three members appointed by the Governor of whom:

- a. one is a person from the law enforcement community who is currently working with a multidisciplinary child abuse team,
- b. one person is a practicing public defender or employee of the Office of Public Defender who represents parents who is knowledgeable in deprived actions or termination of parental rights actions and is an active member of the Family Law Section of the Oklahoma Bar Association, and
- c. one person is a practicing attorney in the area of child welfare and who is an active member of the Family Law Section of the Oklahoma Bar Association;

11. Ex officio members of the Child Welfare System Reform

Review Committee shall also include the following:

- a. the Director of the Department of Human Services, or designee,
- b. the State Commissioner of Health, or designee, and
- c. the Director of the Oklahoma Commission on Children and Youth, or designee.

B. Members of the Committee shall serve until June 30, ~~2001~~ 2002. Any vacancies in the membership of the Committee shall be filled for the unexpired term in the same manner as the original appointment.

C. The Committee may divide into subcommittees in furtherance of its purposes.

SECTION 3. AMENDATORY Section 3, Chapter 396, O.S.L. 1999, as amended by Section 3, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7007-1.3), is amended to read as follows:

Section 7007-1.3 A. 1. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one member of the Child Welfare System Reform Review Committee to serve as cochairs who shall serve until June 30, ~~2001~~ 2002.

2. If a vacancy occurs in such office, a new cochair shall be appointed from the Committee in the same manner as the original appointment.

3. Other officers may be elected to serve the Committee for terms of office as may be designated by the Committee members. A majority of members present shall represent a quorum and a majority present may act for the Committee.

B. The Committee may meet at least one time per month and at such other times as may be set by the cochairs of the Committee.

C. Members of the Committee shall receive no salary; however, all members of the Committee shall be reimbursed for their actual and necessary travel expenses as follows:

1. Legislative members of the Committee shall receive reimbursement from the house in which they serve pursuant to Section 456 of Title 74 of the Oklahoma Statutes;

2. Nonlegislative Committee members employed by the state shall be reimbursed by their respective employing agency pursuant to the State Travel Reimbursement Act; and

3. Any other Committee member shall receive reimbursement pursuant to the State Travel Reimbursement Act from funds of the Legislative Service Bureau.

SECTION 4. AMENDATORY Section 4, Chapter 396, O.S.L. 1999, as amended by Section 4, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7007-1.4), is amended to read as follows:

Section 7007-1.4 A. The purposes of the Child Welfare System Reform Review Committee shall be to conduct a systematic review and study of all policies, procedures and Oklahoma Statutes concerning the child welfare system, and to update, reform and recodify, as necessary, any statutes and programs encompassed in the system. The duties of the Committee in preparing recommendations shall be ~~as follows~~ the following:

1. To consolidate similar statutes;
2. To repeal or modify obsolete or duplicate statutes or any statutes which shall have been declared unconstitutional by court decision;
3. To recommend changes in Title 10 and Title 63 of the Oklahoma Statutes concerning the child welfare system;
4. To clarify and update any existing statutory language;
5. To recodify those sections of law which relate to child welfare reform when such recodification will improve the location, use, application and appropriateness of those sections of law; and
6. To perform any other acts necessary to complete the purposes of the Committee, including, but not limited to:
 - a. the feasibility of videotaping or audiotaping a child alleged to be severely physically or sexually abused at the investigatory stage,
 - b. studying whether parents or custodians of a child should be given a Miranda-type warning during a child abuse investigation,
 - c. examining the fair and impartial hearing procedure for foster parents provided by the Department of Human Services and the Department of Juvenile Justice,
 - d. examining sibling visitation rights,
 - e. examining how to improve representation of abused and neglected children in the court system,
 - f. prohibiting homosexuals from adopting children,

- g. recognizing rights of relatives, including grandparents or other relatives who have physical custody of children related to them within the third degree of consanguinity or affinity standing in loco parentis to such children in deprived or nondeprived cases,
- ~~h. involving the following entities in the establishment of a professional foster parent curriculum for use in a community college or vo-tech setting:
 - ~~(1) higher education,~~
 - ~~(2) vo-tech,~~
 - ~~(3) State Department of Education,~~
 - ~~(4) a trainer who is a foster parent approved by the Department of Human Services,~~
 - ~~(5) a trainer who is a therapeutic foster parent approved by the Department of Human Services, and~~
 - ~~(6) a behavioral health specialist with experience in the area of child abuse and neglect,~~~~
- ~~i.~~ h. determining the feasibility of abolishing the two percent (2%) cap on enrollment for therapeutic foster children in a school district,
- ~~j.~~ i. studying the feasibility of increasing foster care provider rates,
- ~~k.~~ j. reviewing prevention programs and determining if adequate funding exists to provide statewide services and resources,
- ~~l.~~ ~~determining the feasibility and impact of increasing funding levels to the Child Abuse Training Coordination Council to provide more educational training to professionals involved in child abuse prevention, investigation and prosecution,~~

- ~~h.~~ k. studying child abuse and neglect assessment and investigation procedures to determine if certain procedures need to be modified or refined,
- ~~h.~~ l. establishing a policy to encourage district attorneys' offices to assign an experienced attorney to a deprived child proceeding and to allow an assistant district attorney and a public defender assigned to a deprived child proceeding to receive equal pay commensurate with experience,
- ~~h.~~ m. determining methods for improving the quality of legal representation available to children adjudicated deprived including, but not limited to, a requirement that an attorney who is involved in a deprived child proceeding shall annually attend at least six (6) hours of related training, to be made available at a nominal and reasonable cost, in order to be eligible to receive compensation from the local court,
- ~~h.~~ n. studying, in conjunction with the Juvenile Justice Oversight Committee of the Supreme Court, the feasibility of:
- (1) establishing uniform court rules and procedures for use in deprived proceedings, and
 - (2) drafting a statute to deem a parent an "interested" or "necessary" party in a deprived child proceeding when that parent is not accused of causing the deprivation of the child,
- ~~h.~~ o. evaluating and making recommendations regarding the use of the term "dependence" in Section 7001-1.3 of this title and "chemically dependent" in Section 7103 of this title, ~~and~~
- ~~h.~~ p. reviewing statutes related to mandatory reporting of child abuse, and

g. any other issues concerning the child welfare and juvenile justice systems.

B. 1. The staff of the Committee shall be responsible for drafting recommended legislation in accordance with current legislative drafting procedures.

2. The Committee shall prepare a final draft of recommended changes, and shall submit its recommendations to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by February 15, ~~2001~~ 2002.

SECTION 5. AMENDATORY Section 5, Chapter 396, O.S.L. 1999 (10 O.S. Supp. 2000, Section 7007-1.5), is amended to read as follows:

Section 7007-1.5 A. The Oklahoma House of Representatives and the Oklahoma State Senate shall provide, as may be necessary, staff assistance to the Child Welfare System Reform Review Committee as necessary to assist the Committee in the performance of its duties.

B. All departments, officers, agencies and employees of this state shall provide information, as may be necessary, to assist the Child Welfare System Review Committee in the performance of its duties.

SECTION 6. AMENDATORY Section 38, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7004-1.6), is amended to read as follows:

Section 7004-1.6 A. This section and Section ~~39~~ 3230 of ~~this act~~ Title 70 of the Oklahoma Statutes shall be known and may be cited as the "Independent Living Act".

B. The purpose of the Independent Living Act shall be:

1. To ensure that eligible individuals who have been or are in the foster care program of the Department of Human Services due to abuse or neglect receive the protection and support necessary to allow the individuals to become self reliant and productive citizens

through the provision requisite services that include, but are not limited to, housing, medical coverage and education; and

2. To break the cycle of abuse and neglect that obligates the state to assume custody of children.

C. Individuals eligible for services pursuant to the Independent Living Act include any individual up to twenty-one (21) years of age who has been in the custody of the Department of Human Services due to abuse or neglect for any nine (9) of the twenty-four (24) months after the individual's sixteenth birthday and before the individual's eighteenth birthday.

D. Individuals who are eligible for services pursuant to the Independent Living Act and who are between eighteen (18) and twenty-one (21) years of age shall be eligible for Medicaid coverage, provided such individuals were also in the custody of the Department of Human Services on the date they reached eighteen (18) years of age.

E. The Department of Human Services is authorized to provide temporary housing for individuals eligible for services under the Independent Living Act. Such temporary housing shall be available to eligible individuals, not to exceed three hundred sixty-five (365) days, which need not be consecutive.

SECTION 7. AMENDATORY Section 10, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 2000, Section 7210), is amended to read as follows:

Section 7210. The Department of Human Services, the Department of Juvenile Justice, and each child-placing agency shall make special efforts to recruit foster placement for children in their custody from suitable relatives and kin of the child, and ~~from among families of the same minority racial or minority ethnic heritage of the child;~~ provided shall make diligent efforts to recruit foster and adoptive families that reflect the ethnic and racial diversity of children for whom foster and adoptive homes are needed.

~~Provided, however, no child shall be delayed in being placed or removed from any placement in order to place the child in a family of the same minority racial or minority ethnic heritage, unless it is determined to be in the best interests of the child. Special person shall be denied the opportunity to become a foster or adoptive parent on the basis of the race, color, or national origin of the person, or of the child involved. No child shall be delayed or denied placement into foster care or adoption on the basis of the race, color, or national origin of the adoptive or foster parent, or of the child involved. Diligent efforts to recruit shall include, but shall not be limited to, contracting and working with community organizations and religious organizations, utilizing local media and other local resources, conducting outreach activities, and increasing the number of minority recruitment staff employed by the Department of Human Services, the Department of Juvenile Justice and the child-placing agency.~~

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7007-1.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby establishes to continue until June 30, 2002, the Judicial Coordination Advisory Study Panel. The Study Panel shall develop a comprehensive plan for court systems across Oklahoma to apply for federal funds as authorized pursuant to the Strengthening Abuse and Neglect Courts Act of 2000.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7007-1.7 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Judicial Coordination Advisory Study Panel shall consist of the following fourteen (14) members:

1. Nine members representing various rural and metropolitan areas across Oklahoma and who are judges having juvenile docket

responsibilities, appointed by the Juvenile Justice Oversight Committee of the Supreme Court;

2. One member who serves as a court-appointed special advocate, appointed by the Oklahoma Court-Appointed Special Advocate Association;

3. The Director of the Administrative Office of the Courts, or designee;

4. The Director of the Department of Human Services, or designee;

5. The Director of the Oklahoma Commission on Children and Youth, or designee; and

6. The Executive Director of the Office of Juvenile Affairs, or designee.

B. 1. Appointments to the Judicial Coordination Advisory Study Panel shall be made as soon as possible after the effective date of this act. The Study Panel shall call its first meeting as soon as possible after the appointments are made.

2. Members of the Judicial Coordination Advisory Study Panel shall elect two cochairs from its membership to serve until June 30, 2002.

3. Vacancy in such office shall be filled in the same manner as the original appointment. A majority of the members of the Study Panel shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Study Panel.

C. Members of the Judicial Coordination Advisory Study Panel shall receive no compensation for serving on the Study Panel, but shall receive travel reimbursement as follows:

1. State agency members of the Study Panel shall be reimbursed by their respective agencies for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act; and

2. Any other Study Panel members shall receive reimbursement pursuant to the State Travel Reimbursement Act from funds of the Legislative Service Bureau.

D. The Study Panel may divide into subcommittees in furtherance of its purposes. Staffing shall be provided by the respective agencies of the Study Panel.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7007-1.8 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The purposes of the Judicial Coordination Advisory Study Panel shall be to develop a comprehensive plan for court systems throughout Oklahoma to apply for federal funds authorized in the Strengthening Abuse and Neglect Courts Act of 2000, which provides:

1. Competitive grant funding for automated case tracking systems;

2. Competitive grant funding for backlogged abuse and neglect cases; and

3. Competitive grant funding for expansion of court-appointed special advocates (CASA) in underserved areas.

B. The duties of the Study Panel shall include, but not be limited to:

1. Providing information concerning federal grant application;

2. Developing a process by which court systems can apply for federal grant funding;

3. Identifying interested court systems applying for such federal funding;

4. Monitoring the progress of court systems applications for federal grant funding; and

5. Documenting federal grant funding awards made to court systems in Oklahoma.

C. The Judicial Coordination Advisory Study Panel shall issue a report concerning the comprehensive plan developed, and a listing of

the court systems in Oklahoma awarded federal funding, pursuant to the Strengthening Abuse and Neglect Courts Act of 2000, to the Legislature and the Governor on or before February 15, 2002.

SECTION 11. AMENDATORY 10 O.S. 1991, Section 1116.4, as amended by Section 3, Chapter 72, O.S.L. 1993 (10 O.S. Supp. 2000, Section 1116.4), is amended to read as follows:

Section 1116.4 No member of a postadjudication review board or staff member of such board may disclose any information regarding individual cases acquired from case reviews or be compelled to disclose such information except:

1. When such information pertains to criminal acts or violations of any law;
2. When the child was the victim of a crime. The members of the board or staff member of such board may be required by a court of competent jurisdiction to testify at any proceeding in which the commission of such a crime is the subject of inquiry; or
3. When the person waives the privilege by bringing charges against the board.

Nothing in this act shall be construed to prohibit any board member or staff member of such board from testifying in court hearings concerning matters of adoption, child abuse, child neglect, or matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues and administrative superiors on behalf of the child, parent or parents of the child.

Any person participating in a judicial proceeding as a postadjudication review board member shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

SECTION 12. AMENDATORY 10 O.S. 1991, Section 402, as last amended by Section 1, Chapter 233, O.S.L. 1999 (10 O.S. Supp. 2000, 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 child care facility, child placing agency, foster family home, group home, child care center, part-day child care program, family child care home, or large family child care home providing either full-time or part-time care for children away from their own homes;

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 the private residence of a family which provides foster care services to a child, and includes 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, a home assessment, 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 Department of Public Safety for determining suitability of an individual for employment as a highway patrol officer;

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

8. "Family child care home" means a family home which provides care and supervision for seven or fewer children for part of the twenty-four-hour day. The term "family 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;

9. "Large family child care home" means a residential family home which provides care and supervision for eight to twelve children for part of the twenty-four-hour day;

10. "Child care center" means a facility which provides care and supervision for children and which operates for more than thirty (30) hours per week. The term "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 facility that provides care and supervision for children and that operates for more than fifteen (15) and up to thirty (30) hours per week;

12. "Residential child care facility" means a twenty-four-hour residential facility with children living together with or supervised by adults other than their parents or relatives;

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

~~13.~~ 14. "Commission" means the Commission for Human Services, the policy-making and general supervisory body of the Department; and

~~14.~~ 15. "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 13. AMENDATORY 10 O.S. 1991, Section 403, as last amended by Section 6, Chapter 385, O.S.L. 2000 (10 O.S. Supp. 2000, 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 a 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 that offers elementary education in grades kindergarten through third grade;
6. 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. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;
8. 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. Nursery schools, kindergartens or other facilities the purposes of which are primarily educational, recreational or medical, and that operate part-day child care programs which provide care and supervision for eight (8) or more children for fifteen (15) or fewer hours per week;
10. Facilities whose primary purpose is medical treatment;
11. Boarding schools whose primary purpose is education and that are recognized as accredited by the State Board of Education.

To be exempt, programs must have classroom facilities that are not used for residential living and shall not have been granted nor have assumed legal custody of children attending the facility. Further, such schools must follow reasonable holiday and seasonal recesses to permit students reasonable opportunity to return to their primary residence with parents or legal guardians. For the purposes of this law, the Oklahoma School of Science and Mathematics shall be considered a boarding school and exempt from licensure;

12. Day treatment programs and maternity homes operated by a licensed hospital; or

~~12.~~ 13. Juvenile facilities certified by the Office of Juvenile Affairs or certified by any other state agency authorized by law to license such facilities.

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

SECTION 14. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 177, O.S.L. 2000 (10 O.S. Supp. 2000, Section 404.1), is amended to read as follows:

Section 404.1 A. 1. Except as otherwise provided by subsection B of this section, the Department of Human Services shall require a criminal history records search, conducted by the Oklahoma State Bureau of Investigation, for any person making application to establish or operate a child care facility prior to the issuance of a license to operate such facility.

2. a. Every child care facility shall arrange, prior to employment, for a criminal history records search to be conducted by the Oklahoma State Bureau of Investigation for any person to be employed by the child care facility.

b. In addition, any child care facility, licensed or approved pursuant to the Oklahoma Child Care

Facilities Licensing Act, and located in a private residence, shall arrange for a criminal history records search for any adult residing in the child care facility. A criminal history records search conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the private residence.

3. If the adult has lived in Oklahoma for less than one (1) year, a criminal history records search shall also be obtained from the previous state of residence. If the applicant planning to establish or operate a child care facility, or an employee or contract employee of the child care facility, or the contractor of the child care facility has resided in Oklahoma for less than one (1) year, the criminal history records search shall also be obtained from such person's previous state of residence.

B. 1. a. On and after September 1, 1998:

(1) any child-placing agency contracting with a person for foster family home services or in any manner for services for the care and supervision of children shall also, prior to executing a contract, complete:

(a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions 2 and 4 of this paragraph, and

(b) a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act,

except as otherwise provided by divisions 2 and 4 of this paragraph.

- (2) The child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement,
- (3) A national criminal history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence,
- (4) Provided, however, the Director of Human Services or the Department of Juvenile Justice or designee may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe physical condition which precludes such person's being fingerprinted, and
- (5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs to conduct a juvenile justice information system review, pursuant to the provisions of Sections 7302-9.6 and 7302-3.8 of this title, for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently moves into the private residence. As a condition of contract, the child care facility shall obtain the consent of the

parent or legal guardian of the child for such review.

- b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.
2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions 2 and 4 of this paragraph, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services or the Department of Juvenile Justice, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant. In addition, except as otherwise provided by divisions 2 and 4 of this paragraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.
- (2) The Department of Human Services and Department of Juvenile Justice may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home

has resided in this state for at least (5) years immediately preceding such placement.

(3) A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence.

(4) The Director of Human Services or the Director of the Department of Juvenile Justice or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person's being fingerprinted.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.

3. Each Department shall provide for a juvenile justice information system review pursuant to Section 7302-3.8 of this title for any child over the age of thirteen (13) years residing in a foster family home, other than the foster child, or who subsequently moves into the private residence.

C. The Commission for Human Services or the Board of Juvenile Affairs shall promulgate rules to identify circumstances when a criminal history records search or foster parent eligibility assessment for an applicant or contractor, or any person over the age of thirteen (13) years residing in a private residence in which a child care facility is located, shall be expanded beyond the

records search conducted by the Oklahoma State Bureau of Investigation or as otherwise provided pursuant to this section.

D. 1. The following persons shall not be required to obtain a criminal history records search or a national criminal history records search based upon submission of fingerprints to the Federal Bureau of Investigation pursuant to this section:

- a. a parent volunteer who transports children on an irregular basis, and
- b. a child of a child care center or family child care home operator who became an adult during continuous residence at the licensed or approved facility.

2. These exemptions shall not preclude the Department from requesting a criminal history records search or requesting a national criminal history records search based upon submission of fingerprints or investigating criminal, abusive or harmful behavior of such persons, if warranted.

E. Except as otherwise provided by the Oklahoma Children's Code and subsection G of this section, a conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

F. 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner in a file that is separate from employment records. The information may be transmitted to the Department for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by or contracts with a child care facility, the information received pursuant to a criminal history records search, foster parent eligibility assessment, or a national criminal history records search based upon submission of fingerprints shall not be made a part of that individual's personnel or contract records but shall be maintained pursuant to this subsection. The information, along with

any other information relevant to the individual's ability to perform tasks that require direct contact with children, may be released to another child care facility in response to a request from the child care facility that is considering employing or contracting with the individual.

3. Requirements for confidentiality and record keeping with regard to the information shall be the same for the child care facility receiving the information in response to a request as those provided for in paragraph 1 of this subsection for the child care facility releasing such information.

G. 1. A criminal history investigation or national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

2. a. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or contract with, or allow continued employment of or contracting with any person who is required to register pursuant to the Sex Offenders Registration Act. Any person required to register pursuant to the Sex Offenders Registration Act who violates any provision of this act shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment.

b. Upon a determination by the Department of any violation of the provisions of this section, the violator shall be subject to and the Department may pursue:

- (1) an emergency order,
- (2) license revocation, or denial ~~or nonrenewal~~,
- (3) injunctive proceedings,
- (4) an administrative penalty not to exceed Ten Thousand Dollars (\$10,000.00), and
- (5) referral for criminal proceedings.

c. In addition to the penalties specified by this section, the violator may be liable for civil damages.

SECTION 15. AMENDATORY 10 O.S. 1991, Section 405, as last amended by Section 1, Chapter 130, O.S.L. 1999 (10 O.S. Supp. 2000, Section 405), is amended to read as follows:

Section 405. A. 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~~ The Department shall not be required to be licensed, but shall be bound by the standards it prescribes. 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. 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 and in the manner prescribed by the Department ~~and in the manner prescribed~~. Temporary authorization may be granted to allow the Department to investigate the activities and standards of care of the applicant. 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. A provisional license may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules of the Department, as provided in Section 404 of this title.

C. All licenses shall be in force ~~for two (2) years from the month of issuance~~ unless revoked as authorized by Section ~~408~~ 407 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 16. AMENDATORY 10 O.S. 1991, Section 406, as last amended by Section 2, Chapter 130, O.S.L. 1999 (10 O.S. Supp. 2000, 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, 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, ~~refusal to issue or renew~~ the denial of an application for a license, or the filing of an injunction pursuant to the provisions of Section 409 of this title.

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, ~~refuse to issue or renew~~ deny a license, and request an injunction.

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 concerning a report of a violation of a licensing requirement, or 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. This shall not prohibit the Department 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.

SECTION 17. AMENDATORY 10 O.S. 1991, Section 407, as last amended by Section 3, Chapter 130, O.S.L. 1999 (10 O.S. Supp. 2000, 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~~ deny issuance of the license of any child care facility found to be in violation of any provision of this 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~~ denied unless and until such time as the licensee or applicant ~~shall have~~ has been given at least thirty (30) days' notice in writing of the grounds of such proposed revocation or ~~refusal~~ denial.

2. At the time the facility is given notice in writing of the revocation of license or ~~refusal to issue or renew~~ denial of a license, 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~~ denial is protested within thirty (30) days of receipt of such 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 such licensee or applicant to present testimony and confront witnesses.

4. Notice of such hearing shall be given to such licensee or applicant by personal service or by delivery to the proper address by certified mail, return receipt requested, at least two (2) weeks prior to the date thereof.

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

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, the Department may without notice or hearing issue an emergency 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 emergency order shall be effective immediately. Any person to whom such an emergency order is directed shall comply with such emergency order immediately, but ~~on application~~ upon written request to the Department on or before the tenth day after receipt of the emergency order, shall be afforded a hearing ~~within ten (10) days of receipt of such notice~~ by the Department on or before the tenth day after receipt of the request.

- 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 18. AMENDATORY 10 O.S. 1991, Section 408, as last amended by Section 4, Chapter 130, O.S.L. 1999 (10 O.S. Supp. 2000, 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~~ denial of 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 such 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~~ denying 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 19. AMENDATORY 10 O.S. 1991, Section 410, is amended to read as follows:

Section 410. A. Any person or agent, representative, or officer of any child care facility who violates any of the provisions of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act shall, upon conviction thereof, be ~~deemed~~ guilty of a misdemeanor and punished in accordance with the provisions of ~~21 O.S.1961, §~~ Section 10 of Title 21 of the Oklahoma Statutes.

B. Whenever any agent, representative, or officer of any child care facility ~~shall be~~ is convicted under authority of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act, such conviction shall be sufficient ground for the revocation of the license of ~~said~~ the licensee.

SECTION 20. AMENDATORY 10 O.S. 1991, Section 412, is amended to read as follows:

Section 412. A. The immunizations required by ~~this act~~ Sections 411 through 415 of this title, and the manner and frequency of ~~their~~ the administration of immunizations, as prescribed by the State Board of Health, shall conform to recognized standard medical practices in this state. The State Department of Health shall supervise and secure the enforcement of the required immunization program.

B. The Department of ~~Institutions, Social and Rehabilitative Human Services~~ shall render reasonable assistance to the State Department of Health in the enforcement of the provisions of ~~this~~

~~act~~ Sections 411 through 415 of this title. This assistance shall be in the form of revocation or denial of the license ~~or the refusal to renew the license of any facility~~ of any child care facility not in compliance with ~~this act~~ Sections 411 through 415 of this title.

SECTION 21. Sections 1 through 11 of this bill shall become effective July 1, 2001.

SECTION 22. Sections 12 through 20 of this bill shall become effective October 1, 2001.

SECTION 23. 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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