

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1329

By: Cain of the Senate

and

Gilbert of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to An act relating to children; amending 10 O.S. 2001, Sections 21.1, 1116.2, 1116.3, 1116.6, 7003-2.1, 7004-3.4, 7208, 7501-1.3, 7505-6.2, 7510-1.1, 7510-1.2, 7510-1.3, 7510-1.4, 7510-1.5, and 7510-1.6, which relate to child custody and visitation, postadjudication review boards, Oklahoma Children's Code, Oklahoma Adoption Code and the Subsidized Adoption Act; adding grounds for denial of custody; providing for reimbursement for certain costs; specifying time period for review of certain custody placements; removing duty of Administrative Director of the Courts; adding procedures for emergency custody; requiring Department of Human Services to establish placement for certain infants; modifying duties of Advocate General; requiring confidentiality; providing exceptions; providing a penalty; authorizing and limiting use of confidential information; providing exceptions; providing certain access to certain information; prohibiting use of certain privileges; removing certain duties; clarifying certain time limits; providing for informality of certain hearing; clarifying definition; clarifying requirement for criminal background check under certain circumstances; renaming Act; modifying definitions; clarifying requirements for certain Department program; stating benefits; modifying eligibility for certain benefits; requiring certain signed agreements; modifying commencement of certain payments; requiring Department to determine certain payments in compliance with specific rules; authorizing certain adoption assistance agreements; stating time period for approval of certain agreements; providing for certain retroactive payments under specific circumstances; limiting time period for certain payments; modifying time period for receipt of certain payments; conforming language; modifying certain hearing procedures; amending 43 O.S. 2001, Sections 107.1, 107.3, 112, and 112.2, which relate to certain divorce proceedings; adding exemptions for certain waiting periods; modifying definitions; clarifying language; adding action for determination of best interest of a child; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, is amended to read as follows:

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

1. A parent or to both parents jointly except as otherwise provided in subsection B of this section;
2. A grandparent;
3. A person who was indicated by the wishes of a deceased parent;
4. A relative of either parent;
5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or
6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. ~~When~~ Subject to subsection E of this section, when a parent having physical custody and providing support to a child becomes deceased or when the custody is judicially removed from such parent, the court may only deny the noncustodial parent custody of the child or guardianship of the child if:

1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:
 - (1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

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

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

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

3. The parental rights of the noncustodial parent have been terminated;

4. The noncustodial parent has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;

5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code as a result of the actions of the noncustodial parent and such parent has not successfully completed any required service or treatment plan required by the court; or

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

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

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

E. 1. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody of, guardianship of or visitation with a child:

a. is or has ~~previously~~ been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

b. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to:

a. a person who is or has been subject to ~~or previously~~ ~~subject to~~ the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

b. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 1116.2, is amended to read as follows:

Section 1116.2 A. There is hereby established a postadjudication review board in each judicial district in the state. Members and alternate members of the postadjudication review boards shall be residents of or employed within the judicial district in which the board serves and shall be appointed by the Oklahoma Commission on Children and Youth after consultation with judges in the judicial district having juvenile docket

responsibility. The Oklahoma Commission on Children and Youth may establish additional postadjudication review boards as needed for each county within a judicial district.

B. A postadjudication review board for each judicial district shall consist of at least five (5) members. Alternate review board members may be appointed to serve in the absence of a regularly appointed board member. Alternate board members shall be appointed in the same manner as regularly appointed board members. On and after September 1, 1991, currently serving board members shall serve until appointments are made by the Commission on Children and Youth. The Commission on Children and Youth shall complete initial appointments to the review boards no later than June 30, 1992.

C. Board members shall be appointed for a term of three (3) years. Members shall serve after the expiration of their terms until their respective successors shall have been appointed. Vacancies shall be filled for the duration of unexpired terms. The review board members shall be appointed according to the following guidelines:

1. One member shall be a person who has training or experience in issues concerning child welfare, or a person who has demonstrated an interest in children through voluntary community service or professional activities;

2. Whenever possible, at least one member of the board shall be an individual who has served as a foster parent, provided that no person on the review board shall participate as a board member in any review hearing in which he is a party; and

3. No more than one person employed by any child welfare agency or juvenile court may be appointed to a board at the same time, provided such person shall not participate in any review hearing in which he is professionally involved.

D. Each postadjudication review board shall annually elect a chairperson and shall notify the Commission on Children and Youth as

to the name and address of the chairman. A list of the members of each local board and its officers shall be filed with the Presiding Judge of the judicial district and each judge within the district having juvenile docket responsibility.

E. Each postadjudication review board shall meet as often as is necessary at a place it designates to carry out the duties of the board established by Section 1116.3 of this title. The review board shall meet at least twice annually. Each review board shall be subject to the provisions of the Oklahoma Open Meeting Act, except that the actual case reviews shall be held in executive session and the names of the children in placement shall not be published.

F. As a condition of membership thereto, members and alternates of the postadjudication review boards shall attend the next available orientation program after appointment to the board. Failure to attend an orientation program, at the discretion of the Commission on Children and Youth, may result in the removal of the board member. Members of postadjudication review boards shall attend the annual meeting or training programs or both such meeting and training programs as are authorized and directed by the Commission on Children and Youth.

G. Members of postadjudication review boards shall serve without compensation, but shall be reimbursed for travel and training expenses from monies appropriated by the Legislature for such purposes, as provided by the State Travel Reimbursement Act. The Commission on Children and Youth shall provide members of postadjudication review boards with necessary operating supplies and postage fees or members shall be reimbursed for these expenses.

H. The Commission on Children and Youth shall be responsible for developing procedures for the removal of a member from a postadjudication review board. The grounds for the removal of a postadjudication review board member shall include but not be limited to:

1. Failure to attend board meetings as required by the Commission on Children and Youth;
2. Engaging in illegal conduct involving moral turpitude;
3. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; or
4. Wrongful disclosure of information as provided by Section 1116.4 of this title.

I. Necessary staff assistance required by the postadjudication review boards may be provided by the bailiff or bailiffs, or other person designated by the court, of the judges with juvenile docket responsibility in the judicial district. Upon the request of the presiding judge, the Chief Justice of the Supreme Court may authorize additional staff to be paid from local court funds to assist the review board.

The Administrative Director of the Courts may include such additional funding requests in the annual budget for the courts as are necessary to provide staff and administrative support for the review boards.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 1116.3, is amended to read as follows:

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

The duties of a review board shall be to:

1. Review the case of every adjudicated deprived child at least once every six (6) months and submit to the court within ten (10) days of any review hearing its findings and recommendations.
 - a. Such review shall include, but not be limited to, consideration and evaluation of:

- (1) the appropriateness of the goals and objectives of the treatment and service plan,
- (2) the appropriateness of the goals and objectives of the permanency plan and permanency planning, and
- (3) the appropriateness of the services provided to the child, and to the parent, stepparent, or other adult living in the home of the child, or legal guardian, or custodian.

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

2. Review the case of every child alleged to be deprived and held in an out-of-home placement six (6) months after removal and every six (6) months thereafter until adjudication occurs or the child is released from out-of-home placement and submit to the court within ten (10) days of any scheduled hearing its findings and recommendations. Such review shall include, but not be limited to, consideration and evaluation of:

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

3. Review the case of every child adjudicated deprived pursuant to the laws of another state or territory, when the child is currently residing in Oklahoma and the Department of Human Services has been notified of the change of residence by the other state or territory and has agreed to provide services to the child pursuant to the Interstate Compact on the Placement of Children or other agreement concerning the child. The Department shall notify the proper review board of the location of the child and shall provide such review board with information received by the Department from the other state concerning the child or placement along with any reports made by the Department concerning the child or placement. The review board shall report its findings to the Department and may report such findings to the agency or court in the state having jurisdiction for the custody of the child. The child and the custodian of the child may be required to be present at the review board's meeting regarding the child.

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

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

5. Forward copies of the findings and recommendations of the review board to the court having jurisdiction of the case, the parent, legal guardian, attorney representing the child, custodian of the child, agency supervising the case or legal custodian of the child and to any other interested party as determined by the court. It shall be the duty of the court clerk to ensure that all documents filed pertaining to the case of an adjudicated child are properly

noted and affixed in the file of the child prior to the commencement of the review process by the review board. The bailiff or bailiffs of the judges having juvenile docket responsibility within the district shall transmit the information necessary for the case reviews to the review board for that district.

B. The review board's report of its findings and recommendations shall be admitted into evidence in any dispositional hearing, and may be relied upon to the extent of its probative value, even though not competent for purposes of an adjudicatory hearing.

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

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

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

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

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

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

E. A review board shall report annually its findings, recommendations, and assessments of the effectiveness of sections of law pertaining to individual treatment plans, information to accompany deprived children placed outside the home, and dispositional orders and Sections 1116.2 through 1116.6 of this title to the Administrator of the Courts, the Supreme Court, to the court having jurisdiction of the case, to the State Postadjudication Review Advisory Board, and the Oklahoma Commission on Children and Youth and provide such other reports as deemed proper or that may be requested from time to time by the Oklahoma Commission on Children and Youth, the Governor, the Legislature, or the Supreme Court.

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

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

SECTION 4. AMENDATORY 10 O.S. 2001, Section 1116.6, is amended to read as follows:

Section 1116.6 A. There is hereby created a State Postadjudication Review Advisory Board which shall meet at least twice each calendar year. The Advisory Board shall have the duty of overseeing the implementation of the state postadjudication review program in coordination with the Oklahoma Commission on Children and Youth.

B. The Advisory Board shall consist of twenty-one (21) members appointed by the Governor as follows:

1. Eight of the members shall be members of the various review boards throughout the state;

2. Five of the members shall be judges of the district court;

3. Five of the members shall represent the general public and may be foster parents;

4. One of the members appointed after the effective date of this act shall be a foster parent representing foster parents who have a current contract with the Department of Human Services to provide foster care services;

5. One of the members appointed after the effective date of this act shall be a foster parent representing child-placing agencies which have current contracts with the Department to provide foster care services; and

6. One of the members appointed after the effective date of this act shall be a foster parent nominated by any local or statewide foster parent association.

The members shall serve at the pleasure of the Governor. The administrative heads of the divisions which have foster care responsibilities within the Department of Human Services and the Office of Juvenile Affairs or their designees shall serve as ex officio members of the Board.

C. The Director of the Oklahoma Commission on Children and Youth shall be the clerk of the Advisory Board.

The Advisory Board shall have the duty to:

1. Assist in the training of the members of the review boards;

2. Serve, in coordination with the Oklahoma Commission on Children and Youth, as a clearinghouse for reports and information concerning the foster care review program and the review boards as they relate to foster care;

3. Make recommendations to the courts, the Oklahoma Commission on Children and Youth, the Governor, the Legislature, the Department of Human Services, the Office of Juvenile Affairs, and other state agencies providing services to children regarding proposed statutory revisions, and amendments to court rules and procedures, and review and make recommendations on permanency planning, foster care and child welfare service delivery policies, guidelines, and procedures;

4. Work with both public and private agencies concerned with foster care and adoption exchanges to inform the public of the need for temporary and permanent homes and other services needed by deprived children; and

5. Specifically:

- a. identify, analyze, and recommend solutions to any issue concerning child welfare and foster care services within the child welfare delivery system,
- b. participate in the statewide planning and promotion of foster parent involvement in local planning for child welfare services, and
- c. develop recommendations concerning foster care training to improve the quality of foster care services.

D. The State Postadjudication Review Advisory Board may designate multidisciplinary committees on the local level to act as advocates for foster parents in order to assist in the resolution of specific complaints concerning foster care and to help facilitate the relationship between the Department of Human Services, the Office of Juvenile Affairs, child-placing agencies, and the foster parents.

E. The Oklahoma Commission on Children and Youth, with the assistance of the ~~Administrative Director of the Courts and the~~ State Postadjudication Review Advisory Board, shall be responsible for developing and administering training procedures and rules for the administration of the state postadjudication review board system.

F. The State Postadjudication Review Advisory Board shall submit a report of the activities of the review boards, including the findings and recommendations of such review boards, to the Oklahoma Commission on Children and Youth on or before May 1 of each year.

G. The Oklahoma Commission on Children and Youth shall incorporate, as appropriate, the findings and recommendations of the review boards in the annual report required by Section 601.9 of this title.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 7003-2.1, is amended to read as follows:

Section 7003-2.1 A. A Pursuant to the provisions of this section, a child may be taken into protective custody prior to the filing of a petition:

1. By a peace officer or employee of the court, without a court order if the child's surroundings are such as to endanger the welfare of the child or if continuation of the child in the child's home is contrary to the health, safety or welfare of the child;

2. By an order of the district court issued upon the application of the office of the district attorney. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal. If verbal, a written application shall be submitted to the district court within one (1) judicial day from the issuance of the order.

a. When an order issued by the district court pursuant to this paragraph places the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 7003-2.4 of this title, an employee of the Department may take the

child into custody in the following limited
circumstance:

- (1) the child is located in an educational or day
care facility,
- (2) it is determined that assumption of the child's
custody from such facility is necessary to
protect the child from risk of endangerment, and
- (3) assumption of the child's custody from the
facility can occur without a breach of the peace,
otherwise the child shall be taken into custody
by a peace officer or employee of the court.

b. It is the intent of the Legislature that emergency
custody of a child pursuant to a court order shall not
occur at an educational or day care facility unless it
is determined necessary to avoid endangerment to the
child. The Department shall establish specific
policies when an employee of the Department may take a
child into emergency custody pursuant to a court order
at an educational or day care facility;

3. By order of the district court when the child is in need of medical or mental health treatment in order to protect the child's health, safety or welfare and the child's parent, legal guardian, custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action pursuant to this article. The court shall specifically include in the order authorization for such medical or mental health treatment as it deems necessary. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child; and

4. Pursuant to the provisions of Section ~~2~~ 7115.1 of this ~~act~~
title.

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

1. ~~Such~~ The child may be taken to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

2. Except as otherwise provided by subsection C of this section, ~~such~~ the child may be taken before a judge of the district court for the purpose of obtaining an order for ~~protective~~ emergency custody. The court may place the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 7003-2.4 of this title. The Department may place the child in a kinship foster care home, another foster home or other suitable placement that is determined by the Department to meet the needs of the child, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

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

4. ~~Such~~ The child may be taken directly to or retained in a mental health facility for mental health care, or inpatient mental health evaluation or inpatient mental health treatment, in

accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, when it reasonably appears to the peace officer or court employee that the child is in need of emergency mental health care to preserve the child's health, or as otherwise directed by the court; and

5. Except as otherwise provided by subsection C of this section, the district court of the county where the ~~protective~~ emergency custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into ~~protective~~ custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

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

1. Designate a licensed child care facility other than a children's shelter appropriate for the temporary care of deprived children if such facility is willing to provide care, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

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

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

D. 1. The Department of Human Services shall establish by rule a placement protocol for at-risk infants.

2. Factors for determining at-risk infants include, but are not limited to:

- a. premature infants,
- b. history of respiratory distress,
- c. oxygen dependency,
- d. diagnosis requiring special care beyond routine infant care,
- e. infants under six (6) weeks of age, and
- f. medical conditions or illnesses of the infants that without protocol placements may result in increased episodes of illness, prolonged hospitalization and increased cost for care.

3. Appropriate placement pursuant to this subsection of at-risk infants shall include, but not be limited to, foster care, approved kinship foster care and health care facilities. A children's shelter shall not be deemed to be an appropriate placement for at-risk infants unless the shelter meets the placement protocol.

4. If the at-risk infant is in a hospital setting, the infant may be placed in another appropriate placement pursuant to this subsection, only upon the release of the infant from the hospital by the infant's primary physician.

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

SECTION 6. AMENDATORY 10 O.S. 2001, Section 7004-3.4, is amended to read as follows:

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

~~B. The Commission~~ is authorized and directed to establish the Office of Client Advocacy within the Department and to employ such personnel as may be necessary to carry out the purposes of ~~subsection A of this section and the duties listed in this subsection~~ section. Such personnel may be dismissed only for cause.

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

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

- a. supervise personnel assigned to the Office of Client Advocacy,
- b. monitor and review grievance procedures and hearings,
- c. ~~investigate unresolved grievances of children in the custody of the Department, and staff grievances on~~

~~behalf of any such child~~ establish and maintain a fair, simple and expeditious system for resolution of grievances of:

- (1) all children in the custody of the Department of Human Services regarding the substance or application of any written or unwritten policy or rule of the Department or of an agent of the Department or any decision or action by an employee or an agent of the Department, or of any child in the custody of the Department,
- (2) foster parents relating to the provision of foster care services pursuant to this section and Section 7204.1 of this title, and
- (3) all persons receiving services from the Developmental Disabilities Services Division of the Department of Human Services,

~~d. investigate grievances of foster parents related to the provision of foster care services pursuant to this section and Section 7204.1 of this title,~~

~~e.~~ investigate allegations of abuse ~~or~~, neglect, sexual abuse, and sexual exploitation, as those terms are defined in the Oklahoma Child Abuse Reporting and Prevention Act, by a caretaker of children, regardless of custody;

- (1) residing outside their own homes other than children in foster care,

~~f. investigate allegations of abuse or neglect of any child~~

- (2) in a day treatment program as defined in Section 175.20 of this title, and submit a report of the results of the investigation to the appropriate

district attorney and to the State Department of Health,

(3) receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, and

(4) residing in a state institution listed in Section 1406 of this title,

e. establish a system for investigating allegations of caretaker misconduct not rising to the level of abuse, neglect, sexual abuse or sexual exploitation with regard to any child or resident listed in subparagraph d of this paragraph,

~~g.~~ f. coordinate any hearings or meetings of Departmental administrative review committees conducted as a result of unresolved grievances or as a result of investigations,

~~h.~~ g. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Commission, the Office of Juvenile System Oversight and other appropriate persons as necessary,

~~i.~~ h. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of any grievance which is not resolved in the favor of the complainant,

~~j.~~ i. perform such other duties as required by the Director of the Department or the Commission, and

~~k.~~ j. develop policies and procedures as necessary to implement the duties and responsibilities assigned to the Office of Client Advocacy.

~~C. The Department shall promptly report to the appropriate district attorney any act or omission committed by 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 allowed to be perpetrated or committed by any such person, upon a child receiving services in a day treatment program or residing outside the child's own home, other than a child in foster care, when such act or omission, upon conviction, would constitute a criminal offense. Copies of all such reports shall be forwarded to the Attorney General~~

B. The Office of Client Advocacy shall make a complete written report of their investigations. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

C. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the reports required by Section 7103 of this title or any other information acquired pursuant to the Oklahoma Child Abuse Reporting and Prevention Act shall be confidential and may be disclosed only as provided in Section 7111 of this title and the Oklahoma Children's Code.

1. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, any violation of the confidentiality requirements of the Oklahoma Child Abuse Reporting and Prevention Act shall, upon conviction, be a misdemeanor punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

2. Any records or information disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purpose for which disclosure is authorized. Rules promulgated by the Commission for Human Services shall provide for disclosure of relevant information concerning Office of Client

Advocacy investigations to persons or entities acting in an official capacity with regard to the subject of the investigation.

3. Nothing in this section shall be construed as prohibiting the Office of Client Advocacy or the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment or protection of a child alleged to be abused or neglected.

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

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

2. The provisions of this subsection shall not apply to any complaint by a foster parent regarding the result of a criminal, administrative or civil proceeding for a violation of any law, rule or contract provision by that foster parent, or the action taken by the Department or a child-placement agency in conformity with the result of any such proceeding.

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

SECTION 7. AMENDATORY 10 O.S. 2001, Section 7208, is amended to read as follows:

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

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

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

- a. give a minimum of five (5) judicial days' advance notice to the foster care family and to the court before removing a child from such family's care, and
- b. at the time of such notification, provide the foster family with a written statement of the reasons for removing a child; and

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

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

custody from a foster placement whenever the state agency or child-placing agency determines that removal is in the best interests of the deprived child, or the delinquent child or the child in need of supervision, consistent with the state's interest in the protection of the public.

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

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

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

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

- a. an emergency situation. As used in this subparagraph, "emergency situation" means a removal that is:
 - (1) for emergency medical or mental health treatment,
 - (2) due to substantial noncompliance by the foster parent with applicable contract requirements and

agreements such that the health, safety or welfare of the child is endangered, or

(3) due to a pending investigation of allegations of abuse or neglect of a child by a foster parent or other person residing in the foster family home, or

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

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

~~F.~~ 5. At the hearing, the Department of Human Services shall inform the court as to the reason why the foster child is being removed from the foster home. The Department of Human Services shall also inform the court as to the number of times a foster child has been moved within the foster family system.

~~F.~~ 6. The court, in the court record, shall explain the reasons why the removal of a foster child from the foster home is in the best interests of the foster child.

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

SECTION 8. AMENDATORY 10 O.S. 2001, Section 7501-1.3, is amended to read as follows:

Section 7501-1.3 As used in the Oklahoma Adoption Code:

1. "Abandonment" includes, but is not limited to, the following:

- a. the parent has left the minor alone or in the care of another who is not the parent of the minor without identifying the minor or furnishing a means of identification for the minor, the whereabouts of the parents are unknown, and the minor's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the minor alone or in the care of another who is not the parent of the minor and expressed a willful intent by words, actions, or omissions not to return for the minor, or
- c. the parent fails to maintain a substantial and positive relationship with the minor for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this section, "establish and/or maintain a substantial, positive relationship" includes but is not limited to:
 - (1) frequent and regular contact with the minor through frequent and regular visitation or frequent, regular communication to or with the minor, and
 - (2) exercising parental rights and responsibilities. Incidental or token visits or communications shall not be sufficient to establish or maintain a substantial and positive relationship with the minor.

The term "abandonment" shall not include when a parent has relinquished a minor to or placed the minor in the custody of a licensed child-placing agency or other court-appointed individual;

2. "Adoptee" means an individual who is adopted or is to be adopted;

3. "Adult" means an individual who has attained eighteen (18) years of age;

4. "Minor" means any person who has not attained the age of eighteen (18) years;

5. "Child-placing agency" means any child welfare agency licensed pursuant to the Oklahoma Child Care Facilities Licensing Act and authorized to place minors for adoption;

6. "Contested proceeding" means any proceeding pursuant to the Oklahoma Adoption Code in which an interested party enters an appearance to contest the petition;

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

8. "Direct placement adoption" means any adoption in which the minor is not placed for adoption by the Department of Human Services or a child-placing agency;

9. "Guardian" means an individual, other than a parent, appointed by a court to be the guardian of the person of a minor;

10. "Parent" means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term "parent" does not include an individual whose parental relationship to a child has been terminated;

11. "Permanent relinquishment" means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Human Services or any person with the assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption;

12. "Putative father" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior

to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception;

13. "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia; and

14. "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor.

SECTION 9. AMENDATORY 10 O.S. 2001, Section 7505-6.2, is amended to read as follows:

Section 7505-6.2 A. Before the final hearing on the petition for adoption, the following must be filed in the proceeding when available:

1. A certified copy of the birth certificate or other record of the date and place of birth of the minor;

2. Any consent, extra judicial consent, or permanent relinquishment, with respect to the minor that has been executed, and any written verifications required by the Oklahoma Adoption Code from the individual before whom a consent, extra judicial consent, or permanent relinquishment was executed;

3. A certified copy of any court order terminating the parental rights of the minor's parents or guardian;

4. A certified copy of any existing court order or the petition in any pending proceeding concerning custody of or visitation with the minor;

5. A copy of any home study performed on the petitioners, including the home studies required by Sections 7505-5.1, 7505-5.2 and 7505-5.3 of this title;

6. In an adoptive placement in which the adoptive parents or birth parents were not both legal residents of Oklahoma prior to the initiation of the adoption process and the parties are not otherwise exempt from the Interstate Compact on the Placement of Children, a copy of the approval by both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children;

7. A copy of any agreement with a public agency to provide a subsidy for the benefit of a minor with a special need;

8. A verified document by the Department, or child-placing agency that placed the minor for adoption, or the attorney for the adoptive parent in direct placement adoption, or the person who is placing the minor for adoption in a direct placement adoption in which the adoptive parent is not represented by an attorney, stating that the petitioner for adoption has been furnished a copy of the medical and social history report, pursuant to Section 7504-1.2 of this title;

9. The name and address, if known, of any person who is entitled to receive notice of the proceeding for adoption;

10. The affidavit of expenditures;

11. A copy of the medical and social history report, as required by subsection D of Section 7504-1.2 of this title, including the initial report and all supplemental reports, if any, prepared pursuant to subsection C of Section 7504-1.2 of this title;

12. Affidavits of nondisclosure, if any, signed by a biological parent;

13. a. A copy of the state criminal background check, national fingerprint-based criminal background check, if required by the provisions of the Oklahoma Adoption Code, a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act, and a search of the child abuse and neglect files maintained for review by authorized entities by the

Department of Human Services pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, or

- b. If the adoptive petitioners are not legal residents of Oklahoma and the sending state has comparable and accessible checks and searches as specified by subparagraph a of this paragraph, a copy of the approval of both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children or verification that this adoptive placement is otherwise exempt from the Interstate Compact on the Placement of Children; and

14. Any such other document or information required by the court.

B. If an item required by subsection A of this section is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence."

SECTION 10. AMENDATORY 10 O.S. 2001, Section 7510-1.1, is amended to read as follows:

Section 7510-1.1 This ~~part~~ act shall be known and may be cited as the "~~Subsidized~~ Oklahoma Adoption Assistance Act".

SECTION 11. AMENDATORY 10 O.S. 2001, Section 7510-1.2, is amended to read as follows:

Section 7510-1.2 As used in the ~~Subsidized~~ Oklahoma Adoption Assistance Act, "~~child~~" means a minor who:

- 1. ~~Has been removed from his or her home as a result of:~~
 - a. ~~a judicial determination to the effect that remaining in the home would be contrary to the child's welfare,~~
~~or~~
 - b. ~~a voluntary placement by the parents if there has been a judicial determination within the first one hundred eighty (180) days of the placement that the placement is in the best interest of the child in the court-~~

~~ordered custody of a public or licensed private nonprofit child-placing agency or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act at the time of the adoptive placement~~

"Child" means any person who has not attained the age of eighteen (18) years who is in the court-ordered custody of the Department of Human Services or a federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act; and

~~2. Is legally free for adoption; and~~

~~3. Is in special circumstances because the child is not likely to be adopted by reason of one or more of the following conditions:~~

- ~~a. physical or mental disability,~~
- ~~b. emotional disturbance,~~
- ~~c. recognized high risk of physical or mental disease,~~
- ~~d. age,~~
- ~~e. sibling relationship,~~
- ~~f. racial or ethnic factors, or~~
- ~~g. any combination of these conditions~~

"Department" means the Oklahoma Department of Human Services.

SECTION 12. AMENDATORY 10 O.S. 2001, Section 7510-1.3, is amended to read as follows:

Section 7510-1.3 A. The Department of Human Services shall establish and administer an ongoing program of ~~subsidized~~ assistance for eligible special needs children in the legal custody of the Department or a federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act, who are not eligible for federally funded adoption assistance benefits. ~~Subsidies and services for children who are in the permanent custody of the Department of Human Services~~ Adoption assistance benefits under this program shall be provided out of funds appropriated to the Department ~~of Human Services~~ for

the maintenance of children in foster care or made available to it from other sources.

~~B. Children who are in the court-ordered custody of a licensed private nonprofit child-placing agency or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall receive subsidies and services from funds appropriated by the Legislature~~ Adoption assistance benefits under this program may include Medicaid coverage, a monthly adoption assistance payment, reimbursement of nonrecurring adoption expenses, special services, or any combination of such benefits.

SECTION 13. AMENDATORY 10 O.S. 2001, Section 7510-1.4, is amended to read as follows:

Section 7510-1.4 ~~A. Whenever significant emotional ties have been established between a child and his foster parent or parents, and the foster parent or parents seek to adopt the child, the child may be certified as eligible for an adoption maintenance subsidy conditioned upon adoption of the child under applicable adoption procedures by the foster parent or parents.~~

~~B. In all other cases, after reasonable efforts have been made and no appropriate adoptive family without the use of subsidy has been found for a A child, may be determined by the Department of Human Services shall certify the child as eligible for a subsidy in the event of adoption.~~

~~C. If the child is in the court-ordered custody of a child-placing agency or federally recognized Indian tribe as defined by the federal Indian Child Welfare Act, that agency or tribe shall present to the Department of Human Services:~~

~~1. Evidence of significant emotional ties between the child and the foster parent or parents of the child; or~~

~~2. Evidence of inability to place the child for adoption due to any of the conditions specified in Section 7510-1.2 of this title. The agency or tribe shall present evidence that reasonable efforts~~

~~have been made to place the child without subsidy, such as recruitment of a potential parent or parents, use of adoption resource exchanges, referral to appropriate specialized adoption agencies and efforts to place the child in a Department of Human Services nonsubsidy adoptive home~~ to be eligible for adoption assistance pursuant to the Oklahoma Adoption Assistance Act if, in accordance with rules promulgated by the Commission for Human Services, the Department has determined that:

1. The child cannot or should not be returned to the home of his or her parents;

2. There exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance; and

3. A reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance except when it would be against the best interests of the child because of such factors including, but not limited to, the existence of significant emotional ties with prospective adoptive parents while the child was in the care of such parents as a foster child.

SECTION 14. AMENDATORY 10 O.S. 2001, Section 7510-1.5, is amended to read as follows:

Section 7510-1.5 A. 1. When a parent or parents are found and approved for adoption of a child who is ~~certified as~~ determined by the Department of Human Services to be eligible for subsidy adoption assistance pursuant to the Oklahoma Adoption Assistance Act, and before the final decree of adoption is issued entered, there must be a signed written agreement between the family entering into the subsidized adoption prospective adoptive parent or parents and the Department of Human Services.

2. Adoption ~~subsidies~~ assistance in individual cases may commence with the ~~adoption~~ adoptive placement or at the ~~appropriate~~

~~time after the adoption decree, and shall be based on the needs of the child as well as the availability of other resources to meet the child's needs~~ time of finalization of the adoption. ~~The subsidy~~ Adoption assistance may be for special services only, or for monthly money payments, and either for a limited period, or for a long term, or for any combination of the foregoing.

~~3. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child:~~

- ~~a. under traditional foster family care, not therapeutic foster care, or~~
- ~~b. in the case of a special service, the reasonable fee for the service rendered~~

Eligibility for and the rate of monthly adoption assistance payments shall be determined by the Department in accordance with rules promulgated by the Commission for Human Services.

B. When a an otherwise eligible child is determined to have a causative, preexisting condition which was not identified or known prior to the legal finalization of the adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption ~~subsidy~~ assistance agreement may be approved by the Department after the final decree of adoption has been entered. ~~Upon the approval of the subsidy~~ In the event an adoption assistance agreement is approved that provides for monthly adoption assistance payments, the adoptive parents ~~shall~~ may also be entitled to receive retroactive ~~subsidy~~ adoption assistance payments for a period not to exceed the two (2) months prior to the date ~~such subsidy~~ the adoption assistance agreement was approved.

C. Any child who met the requirements of the provisions of ~~Section~~ Sections 7510-1.2 and 7510-1.4 of this title, and was determined eligible for Oklahoma adoption assistance ~~payments~~ with

respect to a prior adoption, and is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, shall be eligible for Oklahoma adoption assistance ~~payments~~ with respect to any subsequent adoption.

D. 1. When ~~subsidies~~ adoption assistance benefits are for more than one (1) year, the adoptive parent or parents shall present an annual sworn certification that the adopted child remains under their care and that the conditions that caused the child to be ~~certified~~ initially approved for benefits continue to exist.

2. The adoptive parent or parents shall at all times keep the Department ~~of Human Services~~ informed of circumstances which would make them ineligible for such assistance payments or eligible for assistance payments in a different amount.

3. The Department ~~of Human Services~~ is authorized and directed to make a review of each ~~subsidy~~ adoption assistance agreement annually to assure that the parents are fulfilling their ~~contract~~ obligations under the agreement.

4. No payment may be made to any parents with respect to any child who has attained the age of eighteen (18) years, except where the ~~state~~ Department determines that the child has a physical or mental handicap which warrants the continuation of assistance until the child reaches the age of twenty-one (21) years.

5. Termination or modification of the ~~subsidy~~ adoption assistance agreement may be requested by the adoptive parent or parents at any time.

6. No payment may be made to adoptive parents if the Department determines that the parents are no longer legally responsible for the support of the child or that the child is no longer receiving any financial support from such parents.

E. A child ~~who is a resident of this state when eligibility for subsidy is certified~~ for whom an adoption assistance agreement has

been reached with the Department shall remain eligible and receive
~~subsidy, if necessary for adoption,~~ adoption assistance benefits
regardless of the domicile or residence of the adopting parent or
parents at ~~the time of application for adoption, placement, legal~~
~~decree of adoption or thereafter~~ any given time.

F. All records regarding ~~subsidized~~ adoption assistance shall
be confidential and may be disclosed only in accordance with the
provisions of the Oklahoma Adoption Code.

SECTION 15. AMENDATORY 10 O.S. 2001, Section 7510-1.6,
is amended to read as follows:

Section 7510-1.6 ~~Any subsidy decision by the Department of~~
~~Human Services, which the placement agency or the~~ An adoptive parent
or parents ~~deem adverse to the child, shall be reviewable before a~~
~~Subsidized Adoption Review Committee established by the Department~~
~~of Human Services. The committee shall consist of five (5) members~~
~~with two of the members being representatives of private, nonprofit~~
~~child-placing agencies not party to the appeal~~ whose application for
adoption assistance on behalf of a child has been denied by the
Department of Human Services may request an administrative hearing
within thirty (30) days of the date of the denial.

SECTION 16. AMENDATORY 43 O.S. 2001, Section 107.1, is
amended to read as follows:

Section 107.1 A. 1. In an action for divorce where there are
minor children involved, the court shall not issue a final order
thereon for at least ninety (90) days from the date of filing the
petition which ninety (90) days may be waived by the court for good
cause shown and without objection by either party.

2. The court may require that within the ninety-day period
specified by paragraph 1 of this subsection, the parties attend and
complete an educational program specified by Section § 107.2 of this
~~act~~ title.

B. This section shall not apply to divorces filed for any of the following causes:

1. Abandonment for one (1) year;

2. Extreme cruelty;

3. Habitual drunkenness;

4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage; ~~and~~

6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery;

7. Conviction of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act committed upon a child of either party to the divorce by either party to the divorce; or

8. A child of either party has been adjudicated deprived, pursuant to the Oklahoma Children's Code, as a result of the actions of either party to the divorce and the party has not successfully completed the service and treatment plan required by the court.

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the

parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

SECTION 17. AMENDATORY 43 O.S. 2001, Section 107.3, is amended to read as follows:

Section 107.3 A. In any proceeding for the disposition of children where custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs, and attorney's fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

- (1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,
- (2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and
- (3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

- b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" means:

- a. ~~that a child has been physically, emotionally, or psychologically abused by a parent,~~
- b. ~~that a child has been:~~
 - (1) ~~sexually abused by a parent through criminal sexual penetration, incest, or criminal sexual contact of a minor as those acts are defined by state law, or~~
 - (2) ~~sexually exploited by a parent through allowing, permitting, or encouraging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law,~~
- c. ~~that a child has been knowingly or intentionally or negligently placed in a situation that may endanger the child's life or health, or~~
- d. ~~that a child has been knowingly or intentionally tortured, cruelly confined, or cruelly punished; provided, that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and~~

~~practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph~~

shall have the same meaning as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act or that the child has been adjudicated deprived as a result of the actions or omission of either parent pursuant to the Oklahoma Children's Code; and

2. ~~"Domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional, or psychological harm to the other parent~~ shall have the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;
2. Consider the false allegations in determining custody; and
3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

SECTION 18. AMENDATORY 43 O.S. 2001, Section 112, is amended to read as follows:

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

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

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

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

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

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

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

- a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

- b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

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

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

- a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and
- b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

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

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

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

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. ~~Any~~ Except as otherwise provided by Section 112.1A of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

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

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

SECTION 19. AMENDATORY 43 O.S. 2001, 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 for determining the custody of, guardianship of or the visitation with a child:

1. 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;

2. Evidence of child abuse as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act pursuant to this paragraph. If the parent requesting custody of a child has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or the child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the parent requesting custody and the requesting parent has not successfully completed the service and treatment plan required by the court, there shall be a rebuttable presumption that it is not in the best interests of the child for such parent to have sole custody, guardianship or unsupervised visitation; and

3. Whether any person seeking custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or
- b. is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person who is:

1. Subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; or

2. Residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state.

SECTION 20. This act shall become effective November 1, 2002.

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