

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1670

By: Roach of the House

and

Williams of the Senate

COMMITTEE SUBSTITUTE

[children - Investing in Stronger Oklahoma Families
Act - codification -

emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

Sections 1 and 2 of this act shall be known and may be cited as the "Investing in Stronger Oklahoma Families Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. For purposes of implementing the Investing in Stronger Oklahoma Families Act, the Department of Human Services shall collaborate with other appropriate local, state and federal agencies and private entities to develop by December 31, 2001, a comprehensive strategic state plan for investing in stronger families.

B. The comprehensive strategic state plan shall:

1. Set a goal to annually increase the number of programs for care of children by relatives or other "created families", and

adoption of children at risk remaining in their homes and thereby expand capacity to meet the need for safe, secure and permanent homes for such children;

2. Describe methods to reduce existing barriers to accessing assistance and other grants and programs to aid in developing and ensuring safe, secure and permanent homes for such children;

3. Develop and implement a statewide public awareness campaign which will inform relatives, preadoptive homes, adoptive homes and other persons desiring to obtain legal custody of a child, of the programs, grants and other assistance available to them;

4. Identify effective strategies;

5. Identify public and private resources, both within the agencies subject to the provisions of this section and within the communities;

6. Identify sources of revenue for programs and efforts from private as well as federal, local and state sources;

7. Develop and replicate effective program models;

8. Empower communities in developing local assistance strategies;

9. Develop recommendations for local efforts and technical assistance to communities;

10. Delineate service responsibilities and provide for coordinating the delivery of services by the agencies subject to the provisions of this section;

11. Provide for coordination and collaboration among related efforts and programs;

12. Evaluate strategies and programs;

13. Distribute information on programs and strategies;

14. Provide for contracts or agreements with public and private entities for utilization of identifiable financial resources from federal, state, local and private resources and coordinate those resources to fund-related services;

15. Develop methods of assuring access to services and overcoming barriers to services, such as transportation, health insurance, the cost of treatment, child care and the parents' fear of losing custody of their children;

16. Provide for the continuance of health, treatment and other appropriate services;

17. Describe the respective roles and responsibilities of the public and private agencies implementing the program; and

18. Evaluate other matters as necessary to fulfill the duties of this section.

C. As part of the development and implementation of the comprehensive strategic plan:

1. The Department shall, from funds available and using existing available state resources, develop an information database consisting of data on existing programs serving families who have taken on the responsibility of providing children with safe, secure and permanent homes. In developing the information database, the Department shall coordinate with the Children's Coordinated Data System developed by the Oklahoma Commission on Children and Youth. The information in the database shall include, but not be limited to:

- a. the types and number of programs,
- b. program location, including county,
- c. ages served,
- d. the capacity of the programs,
- e. the hours and calendar of program operations, and
- f. program rates;

2. County-specific information on the number of children currently served shall be compared to the local projected need from:

- a. demographic information and waiting lists maintained for family enhancement programs,

- b. local district estimates of needs for participants in the job opportunities and basic skills training program, and
 - c. families eligible for subsidies;
3. Information shall be compiled regarding:
- a. funding sources and amounts for eligible families,
 - b. health and safety grants,
 - c. resource and referral programs,
 - d. any other public or private funding which is directed toward providing assistance to families who have taken on the responsibility of providing children with safe, secure and permanent homes, and
 - e. any known private funding sources earmarked for providing assistance to families who have taken on the responsibility of providing children with safe, secure and permanent homes;
4. The Department shall compile information on technical assistance activities presently available to existing and potential families who have taken on the responsibility of providing children with safe, secure and permanent homes;
5. The Department shall contract with any private or public entity to assist in the implementation of the Investing in Stronger Oklahoma Families Act; and
6. On or before February 1, 2002, the Department shall submit a preliminary report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate containing:
- a. a compilation of the existing data designated in this section, and
 - b. information available on private sector interest, involvement or plans for development of assistance programs in this state.

D. The Legislature hereby encourages the establishment of family resource assistance that links federal, state and local resources and programs and that creates collaborative and interorganizational partnerships between state governmental agencies and private and nonprofit entities. Such agencies and private and nonprofit entities shall include, but not be limited to:

1. The Department of Human Services;
2. The State Department of Education;
3. The Oklahoma Department of Career and Technology Education;
4. The Oklahoma Department of Commerce;
5. The Oklahoma Employment Security Commission;
6. The Oklahoma Health Care Authority;
7. The State Department of Health;
8. The Commission on Children and Youth;
9. The State Department of Mental Health and Substance Abuse Services;
10. The Oklahoma Department of Corrections;
11. The Oklahoma State Regents for Higher Education;
12. Community action agencies;
13. Local and municipal groups;
14. Substate planning groups;
15. Religious and charitable organizations;
16. Private child placement entities; and
17. Public or private foundations.

E. The Department shall enter into collaborative and interorganizational partnerships as necessary to provide assistance to relatives, adoptive parents and other "created families".

SECTION 3. AMENDATORY Section 26, Chapter 396, O.S.L. 1999 (10 O.S. Supp. 2000, Section 21.2), is amended to read as follows:

Section 21.2 For purposes of Sections ~~27~~ 21.3 and ~~28~~ 21.4 of this act title:

1. "Permanent care and custody" means the right and duty to exercise continuing general supervision of a child and includes, but is not limited to, the right and duty to protect, educate, nurture and to provide the child with food, clothing, shelter, medical care and a supportive environment;

2. "Abandonment" includes, but is not limited to, a state or condition in which the parent of a child:

- a. (1) if the child is twenty-four (24) months or less, has ~~willfully~~ failed to ~~have had~~ establish and maintain a significant or meaningful substantial and positive relationship with the child through visitation or communication with the child placed in the home of a relative related to the child within the third degree, despite having had an opportunity to do so, for at least six (6) continuous months after placement in the home of such relative, or
- (2) if the child is over twenty-four (24) months of age, has ~~willfully~~ failed to establish and maintain a significant or meaningful substantial and positive relationship with the child through visitation or communication with the child, despite having had an opportunity to do so, for a period of twelve (12) consecutive months out of the last fourteen (14) months while in the home of a relative related to the child within the third degree.

Infrequent or token visits, or communications shall not be construed or considered in establishing the proper exercise of parental rights or duties with regard to the child, or

- b. has for a period of twelve (12) consecutive months out of the last fourteen (14) months of placement of the child in the home of a relative related to the child within the third degree, willfully failed, refused or neglected to contribute to the support of such child:
- (1) in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
 - (2) according to such parent's financial ability to contribute to such child's support if no provision for support is provided in an order.

Infrequent or token payments shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child; and

3. "Establish and maintain a substantial and positive relationship" includes, but is not limited to:

- a. frequent, regular and meaningful contact with a child through frequent, regular and meaningful visitation and/or frequent, regular and meaningful communication with a child, and
- b. the exercise of parental rights and duties.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Any relative related to a child within the third degree who has permanent care and custody of a child pursuant to Sections 21.2, 21.3 and 21.4 of Title 10 of the Oklahoma Statutes who completes the relative caregiver's authorization affidavit as required by this section shall have the same rights to authorize medical care and dental care for the minor and to consent to school-related medical care on behalf of the minor that are given to legal guardians

pursuant to Sections 21.5, 170.1 and 170.2 of Title 10 of the Oklahoma Statutes, or by the Oklahoma Guardianship and Conservatorship Act.

B. 1. During the period of time after a child has been willfully left in the custody of a relative related to the child within the third degree, but prior to the time a child is deemed abandoned pursuant to Section 21.2 of Title 10 of the Oklahoma Statutes, such relative shall have the same rights to authorize medical care and dental care for the minor and to consent to school-related medical care on behalf of the minor that are given pursuant to subsection A of this section if:

- a. the relative completes the relative caregiver's authorization affidavit as required by this section,
- b. the child is residing full-time with the relative and the relative contributes the major degree of support for the child, and
- c. the parents have expressed a willful intent by words, actions or omissions not to return for the child, and the relative is unable to contact the parent, or the parent refuses to regain custody of the child after a written request to do so by the relative.

2. Until a child is deemed abandoned pursuant to Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, the decision of a relative to consent to or to refuse medical or dental care for a minor pursuant to this subsection shall be superseded by any contravening decision of the parent of the minor, provided the decision of the parent of the minor does not jeopardize the life, health, or safety of the minor.

3. The affidavit completed pursuant to this subsection shall not be valid for more than one (1) year after the date on which it is executed.

C. 1. A person who acts in good faith reliance on a relative caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, shall not be subject to criminal liability, civil liability to any person, or subject to professional disciplinary action if the applicable portions of the affidavit are completed.

2. A person who relies on the affidavit has no obligation to make any further inquiry or investigation.

3. Nothing in this section shall relieve any individual from liability for violations of other provisions of law.

4. If the minor stops residing with the relative, the relative shall notify any school, health care provider, or health care service plan that has been given a copy of the affidavit.

D. The relative caregiver's authorization affidavit shall be in substantially the following form:

Relative Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Section 21.6 of Title 10 of the Oklahoma Statutes.

Instructions: Completion of items 1-5 and the signing of the affidavit are sufficient to authorize school-related medical care. Completion of items 6-9 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives full-time in my home and I am 18 years of age or older.

1. Name of minor: _____.
2. Minor's birth date: _____.
3. My name (adult giving authorization): _____.
4. My home address: _____

_____.

5. () I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").

6. The child has been living in my home since _____.

7. Check one or both (for example, if one parent was advised and the other cannot be located):

() The child has been left in my custody and I have advised the parent(s) or other person(s) having legal custody of the minor, in writing, of my intent to authorize medical care, and have received no objection.

() The child has been left in my custody and I am unable to contact or locate the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

8. My date of birth: _____.

9. My Oklahoma driver license or identification card number: _____.

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of Oklahoma that the foregoing is true and correct.

Dated: _____ Signed: _____

Notary Stamp

Procedures:

1. The signature of the relative must be notarized.
2. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not necessarily mean that the caregiver has legal custody of the minor.

3. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
4. Unless the relative has legal custody of the child pursuant to Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, this affidavit is not valid for more than one (1) year after the date on which it is executed but may be reexecuted.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative" for purposes of item 5, means a spouse of the qualified relative, parent, grandparent, great-grandparent, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew.
2. The law requires a caregiver, who is not a qualified relative of a child, to notify the Department of Human Services that a child in the caregiver's care has been abandoned. If the caregiver continues to care for the child, the law further requires that the caregiver's home be approved as a foster home. A caregiver should direct any questions to the Department of Human Services.
3. If the child stops living with the caregiver, the caregiver is required to notify any school, health care provider or health care service plan to which an affidavit has been given that the child no longer resides with the caregiver.
4. If a caregiver does not have the information requested in item 9 (Oklahoma driver license or identification card), the caregiver must provide another form of identification, such as a social security number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, shall be subject to criminal liability, civil

liability to any person, or subject to professional disciplinary action, if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes.

E. A caregiver's authorization affidavit shall be invalid unless it substantially contains, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement beginning with the word "warning" specified in subsection D of this section. The warning statement shall be enclosed in a box with 3-point rule lines.

F. Any person who willfully makes a statement in the caregiver's authorization affidavit which the person knows to be false shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment.

G. For purposes of this part:

1. "Person" includes an individual, corporation, partnership, association, the state, or any city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity;

2. "Relative" means a spouse of the relative, parent, grandparent, great-grandparent, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew; and

3. "School-related medical care" means medical care that is required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations and medical examinations conducted in schools for pupils.

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

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

1. "Abandoned infant" means a child who is twenty-four (24) months of age or younger whose parent:

- a. has willfully left the infant alone or in the care of another who is not the parent of the infant without identifying the infant or furnishing any means or methods of identification,
- b. has willfully left the infant alone or in the care of another who is not the parent of the infant and expressed a willful intent by words, actions, or omissions not to return for the infant,
- c. has knowingly placed or knowingly allowed the infant be placed in or remain in conditions or surroundings that posed or constituted a serious danger to the health and safety of the infant thereby demonstrating wanton disregard for the child's well-being,
- d. is a father, or a putative father if the infant was born out of wedlock, and:
 - (1) if an infant is less than ninety (90) days of age, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy,
 - (2) (a) if an infant is older than ninety (90) days but less than fourteen (14) months of age, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the

infant to the extent of his financial ability, which may include contributing to the support of the mother of the infant to the extent of his financial ability during her term of pregnancy.

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

(3) (a) if the infant is fourteen (14) months of age or older, who fails to show that he has exercised proper parental rights or duties with regard to the infant, including, but not limited to, contributing to the support of the infant to the extent of his financial ability.

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

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

that he made sufficient attempts to discover if he had fathered a child or made sufficient attempt to exercise parental rights or duties with regard to the infant prior to the receipt of notice,

e. has not ~~had significant or meaningful~~ established and maintained substantial and positive contact with the infant during the six (6) months immediately prior to out-of-home placement or the six (6) continuous months while in out-of-home placement, and has not made meaningful efforts to gain or regain custody of or to have regular and frequent visitation with the infant, despite being given the opportunity to do so. For purposes of this section, "establish and maintain substantial and positive contact" includes but is not limited to:

- (1) frequent, regular and meaningful contact with the minor child through frequent, regular and meaningful visitation and/or regular and meaningful communication with the minor child,
and
- (2) the exercise of parental rights and duties.

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

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

3. "Assessment" means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat

to a child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:

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

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

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

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

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

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

9. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation.

Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case

supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

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

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

12. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

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

14. "Deprived child" means a child:

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

- e. who is, due to improper parental care and guardianship, absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance, or
- f. whose parent, legal guardian or custodian for good cause desires to be relieved of custody.

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

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

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

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

16. "Emergency custody" means the custody of a child prior to adjudication of the child following issuance of an order of the district court pursuant to Section 7003-2.1 of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 7003-2.4 of this title;

17. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not

enclosing a building or set of buildings used for the lawful custody and treatment of children;

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

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

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

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

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

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

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

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

26. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities

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

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

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

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

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

30. "Kinship guardianship" means a judicially created relationship between a child and a kinship relation of the child established pursuant to the provisions of Section 7003-5.5 of this title;

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

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

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

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

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

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

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

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

39. "Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

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

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

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

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

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

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

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

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

- a. refer to, arrange for, or develop reasonable supportive and rehabilitative services for the family of such child that are required both to prevent unnecessary placement of the child outside of the child's home and to foster, whenever appropriate, the

safe reunification of such child with the child's family, or

b. place a child who cannot be returned home into a permanent placement;

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

(1) after transfer of legal custody of the child, other than adoption, or

(2) when a guardianship or kinship guardianship is established for the child.

b. Residual parental rights and responsibilities may be limited or restricted as determined by the court, and include, but are not limited to:

(1) the right of visitation,

(2) the right to consent to adoption,

(3) the responsibility for support of and costs of medical care for the child, and

(4) the right to determine the religious faith of the child;

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

47. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on

locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

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

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

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

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

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

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

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

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

54. "Torture" means to inflict:

- a. intense emotional or psychological anguish to or suffering by a child, or

- b. physical pain for the purpose of coercing or terrorizing a child;

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

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

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

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

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

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1130, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 28, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7006-1.1), is amended to read as follows:

Section 7006-1.1 A. Pursuant to the provisions of the Oklahoma Children's Code, the finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a

parent to a child in the following situations; provided, however, the paramount consideration in proceedings concerning termination of parental rights shall be the health, safety or welfare and best interests of the child:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph 4 of subsection B of Section 7503-2.1 of this title, who desires to terminate such parent's parental rights; provided that the court finds that such termination is in the best interests of the child;

2. A finding that a parent who is entitled to custody of the child has abandoned the child. For purposes of this paragraph the term "abandonment" includes, but is not limited to, the following:

- a. the parent has willfully left the child alone or in the care of another who is not the parent of the child without identifying the child or furnishing a means of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the child alone or in the care of another who is not the parent of the child and expressed a willful intent by words, actions, or omissions not to return for the child, or
- c. the parent fails to maintain a ~~significant~~ substantial and positive relationship with the child ~~through visitation or communication~~ 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 paragraph, "establish and maintain a substantial and positive relationship" includes, but is not limited to:

- (1) frequent, regular and meaningful contact with the minor through frequent, regular and meaningful visitation and/or frequent, regular and meaningful communication with the minor, and
- (2) the exercise of parental rights and duties.

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained a significant relationship with the child;

- 3. A finding that the child is an abandoned infant;
- 4. A finding that the parent of a child:
 - a. has voluntarily placed physical custody of the child with the Department of Human Services or with a child-placing agency for out-of-home placement,
 - b. has not complied with the placement agreement, and
 - c. has not demonstrated during such period a firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child;
- 5. A finding that:
 - a. the child has been adjudicated to be deprived, and
 - b. such condition is caused by or contributed to by acts or omissions of the parent, and
 - c. termination of parental rights is in the best interests of the child, and
 - d. the parent has failed to show that the condition which led to the adjudication of a child deprived has been corrected although the parent has been given not less than the time specified by Section 7003-5.5 of this title to correct the condition;
- 6. A finding that a subsequent child has been born to a parent whose parental rights to any other child has been terminated by the

court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other child has not been corrected. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney or the child's attorney;

7. A finding that a parent who does not have custody of the child has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights, willfully failed, refused or neglected to contribute to the support of such child:

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

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

8. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 or 1123 of Title 21 of the Oklahoma Statutes, or Section 7115 of this title;

9. A conviction in a criminal action that the parent:

- a. caused the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child,
- b. caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,

- c. committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,
 - d. committed voluntary manslaughter of another child of the parent, or aided or abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or
 - e. committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent;
10. A finding in a deprived child action either that:
- a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court,
 - b. the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse,
 - c. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse,
 - d. the child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household

where the child resides, by the parent of the child,
or

- e. the parent has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;

11. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;

12. A finding that all of the following exist:

- a. the child has been adjudicated deprived, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has been incarcerated, and
- d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and
- e. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of parental rights;

13. A finding that all of the following exist:

- a. the child has been adjudicated deprived, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- d. the continuation of parental rights would result in harm or threatened harm to the child, and
- e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and
- f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his or her parental rights;

14. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's attention;

15. A child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty-two (22)

months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the adjudication date, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home.

B. An order directing the termination of parental rights is a final appealable order.

C. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

D. 1. A petition for termination of parental rights may be filed by the district attorney or the attorney of a child alleged to be or adjudicated deprived.

2. A petition for termination of parental rights shall be filed by the district attorney for those petitions required to be filed pursuant to the provisions of Section 7003-4.7 of this title.

3. If a child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 7003-4.7 of this title.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 60.6, as renumbered by Section 58, Chapter 366, O.S.L. 1997, and as last amended by Section 21, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 2000, Section 7505-4.2), is amended to read as follows:

Section 7505-4.2 A. Consent to adoption is not required from a putative father of a minor who, at the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title, fails to prove he is the father of the child.

B. Consent to adoption is not required from a parent who, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of a child or a petition to terminate parental rights pursuant to Section 7505-2.1 of this title, has willfully failed, refused, or neglected to contribute to the support of such minor:

1. In substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support; or

2. According to such parent's financial ability to contribute to such minor's support if no provision for support is provided in an order.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

C. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if:

1. The minor is placed for adoption within ninety (90) days of birth, and the father or putative father fails to show he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the minor to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of

itself be grounds for finding the minor eligible for adoption without such father's consent.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

D. In any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he made sufficient attempt to discover if he had fathered a minor or made sufficient attempt to exercise parental rights and duties toward the minor prior to the receipt of notice.

E. Consent to adoption is not required from a parent or putative father who waives in writing his right to notice of the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title.

F. Consent to adoption is not required from a parent or putative father who fails to appear at the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title if all notice requirements contained in or pursuant to such sections have been met.

G. Consent to adoption is not required from a parent who is entitled to custody of a minor and has abandoned the minor.

H. Consent to adoption is not required from a parent who ~~willfully~~ fails to establish and maintain a significant substantial and positive relationship with a minor through visitation or communication and who fails in the exercise of parental rights and duties for the child, despite having an opportunity to do so, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of the child. For purposes of this subsection, "fails to

establish and maintain a substantial and positive relationship, and who fails in the exercise of parental rights and duties”, means the parent has not established and/or maintained:

1. Frequent, regular and meaningful contact with the minor through frequent, regular and meaningful visitation and/or frequent, regular and meaningful communication with the minor; and

2. The exercise of parental rights and duties.

I. Consent to adoption is not required from a parent who has been convicted in a criminal action pursuant to the provisions of Sections 7102 and 7115 of this title and Sections 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or who has either:

1. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse that is heinous or shocking to the court or that the minor or sibling of such minor has suffered severe harm or injury as a result of such physical or sexual abuse; or

2. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse.

J. Consent to adoption is not required from a parent who has been convicted in a criminal action of having caused the death of a sibling of the minor as a result of the physical or sexual abuse or chronic neglect of such sibling.

K. Consent to adoption is not required from a parent if the parent has been sentenced to a period of incarceration of not less than ten (10) years and the continuation of parental rights would result in harm to the minor based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous

incarcerations; any history of criminal behavior, including crimes against children; the age of the minor; the evidence of abuse or neglect of the minor or siblings of the minor by the parent; and the current relationship between the parent and the minor and the manner in which the parent has exercised parental rights and duties in the past.

L. Consent to adoption is not required from:

1. A parent who has a mental illness or mental deficiency, as defined by paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities;

2. The continuation of parental rights would result in harm or threatened harm to the minor; and

3. The mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve.

M. Consent to adoption is not required from a putative father who has been served with a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title and who returns the form to the Paternity Registry of the Department of Human Services or agency or attorney who served him explicitly waiving a right to notice and legal rights to the minor or who fails to return the form pursuant to Section 7503-3.1 of this title in time for the form to be received by the Paternity Registry of the Department of Human Services or the agency or attorney who served him within thirty (30) days from the date the Notice of Plan for Adoption was served upon the putative father.

N. Consent to adoption is not required from:

1. An individual who has permanently relinquished the minor pursuant to the Oklahoma Adoption Code;

2. An individual whose parental relationship to a minor has been legally terminated or legally determined not to exist; or

3. The personal representative of a deceased parent's estate.

0. Consent to adoption is not required from a parent who has voluntarily placed a minor child in the care of a licensed child care institution or child-placing agency, if the minor has remained in out-of-home care for eighteen (18) months or more, and the parent has willfully failed to substantially comply for twelve (12) consecutive months out of the fourteen-month period immediately preceding the filing of the petition for adoption with a reasonable written plan of care. Provided, the willful failure to comply with the written plan of care may not be a ground for adoption without consent unless the plan of care, at the time it was initially executed by the parent, contained notice that failure to substantially comply constitutes grounds for adoption without consent. The reasonableness of the plan shall be a question of fact to be determined by the court.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 60.26, as amended by Section 12, Chapter 297, O.S.L. 1996, and as renumbered by Section 59, Chapter 366, O.S.L. 1997 (10 O.S. Supp. 2000, Section 7510-1.2), is amended to read as follows:

Section 7510-1.2 A. As used in the Subsidized Adoption Act: ~~"Child"~~, "child" means a minor who ~~is~~:

1. ~~In~~ 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;

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

3. ~~In~~ 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.

B. For purposes of the Subsidized Adoption Act, adoption subsidies specified by Section 7510-1.5 of this title shall not exceed that which would be allowable from time to time for such child under traditional foster family care. In the case of a special service, the adoption subsidy shall not exceed the reasonable fee for the service rendered.

SECTION 9. 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.

48-1-1360

CJ

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