

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB1977

By: Greenwood

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 7001-1.3, which relates to the Oklahoma Children's Code; modifying construction of definition of deprived child; amending 10 O.S. 2001, Section 7106, which relates to the Oklahoma Child Abuse Reporting and Prevention Act; prohibiting further investigation or assessment upon certain showings; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, 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 and responsibilities 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 and responsibilities 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 and responsibilities 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 and responsibilities 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 attempts to exercise parental rights and responsibilities with regard to the infant prior to the receipt of notice,

e. has not established and/or maintained substantial and positive relationship 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 the infant, despite being given

the opportunity to do so. For purposes of this section, "establish and/or maintain substantial and positive relationship" includes but is not limited to:

- (1) frequent and regular contact with the infant through frequent and regular visitation or frequent and regular communication to or with the infant, and
- (2) the exercise of parental rights and responsibilities.

Incidental or token visits, communications or contributions shall not be sufficient to establish and/or maintain a substantial and positive relationship with 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 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, refuses to approve the medication of, provide or administer the child with methylphenidate hydrochloride (Ritalin).

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 in connection with an action for termination of parental rights, a relinquishment of parental rights, a consent to termination of parental rights or an 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,
- (4) the right to determine the religious faith of the child, and
- (5) the right to consent to termination of parental rights and the right to permanently relinquish parental rights;

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 2. AMENDATORY 10 O.S. 2001, Section 7106, is amended to read as follows:

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

shall adopt the priority system pursuant to rules promulgated by the Commission for Human Services. The primary purpose of the investigation or assessment shall be the protection of the child.

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

3. ~~If an~~ An investigation or assessment conducted by the Department of Human Services in response to any report of child abuse or neglect shall not proceed further if the investigation or assessment shows that the incident reported was:

- a. the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, ~~the investigation or assessment will proceed no further or~~
- b. solely based upon the refusal of the parent, legal guardian, or person having custody or control of a child to approve the medication of, provide or administer the child with methylphenidate hydrochloride (Ritalin).

If such incident was the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, all records regarding the incident shall be expunged.

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

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

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

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

4. An evaluation of the parents or persons responsible for the health, safety or welfare of the child;

5. The adequacy of the home environment;

6. The relationship of the child to the parents or persons responsible for the health, safety or welfare of the child;

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

8. All other pertinent data.

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

2. The investigation or assessment may include a medical, psychological, or psychiatric examination of any child in that home. If admission to the home, school, or any place where the child may be located cannot be obtained, then the district court having

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

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

4. a. If the court determines that the parent or person responsible for the child's health, safety or welfare is indigent, the court shall appoint an attorney to

represent the parent or person responsible for the child's health, safety or welfare at the hearing to obtain mental health records.

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

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

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

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

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

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

G. 1. The county office shall make a complete written report of the investigation. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

2. Reports of assessment recommendations shall not be required to be submitted to appropriate district attorneys unless such district attorneys request that copies of the assessment recommendations be submitted to them. Immediately after the effective date of this act, the Department shall send written notice to all district attorneys in this state informing them of their right to request and receive copies of the assessment recommendations.

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

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

J. If the Department has reason to believe that a parent of the child or other person may remove the child from the state before the investigation is completed, the Department may request the district attorney to file an application for a temporary restraining order in any district court in the State of Oklahoma without regard to continuing jurisdiction of the child. After a hearing on the application, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from

the state pending completion of the investigation if the court finds that the county office or the Department has probable cause to conduct the investigation.

SECTION 3. 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.

48-2-7558 KSM 6/12/15