

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2699

By: Wells

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 1211, which relates to training requirements for certain judicial personnel and court-appointed special advocates; enacting the Bryar Wheeler Act; requiring inclusion of certain areas of training concerning certain visitation situations under certain circumstances for certain persons; defining certain terms; providing for certain evidence; providing for a rebuttable presumption under certain circumstances; ordering supervised visitation for a child in certain circumstances for certain persons; amending 10 O.S. 2001, Section 7001-1.3, which relates to children; modifying certain terms; providing for certain definitions; amending 10 O.S. 2001, Section 7102, which relates to the Oklahoma Child Abuse Reporting and Prevention Act; modifying term; providing for certain definitions; amending 43 O.S. 2001, Section 107.3, which relates to appointment of guardian ad litem; modifying definition; amending 43 O.S. 2001, Section 112.2, which relates to evidence of ongoing domestic abuse; expanding consideration of court in certain situations; requiring certain persons to attend certain treatment programs; providing for certain information to be contained in court record; providing for certain reviews by court; defining certain terms; specifying certain public policy; providing for certain evidence; providing for a rebuttable presumption under certain circumstances; ordering supervised visitation of a child in certain situation for certain persons; defining certain terms; providing certain information to be contained in court record; enacting the Oklahoma Child Supervised Visitation Program; providing terms of program; authorizing certain actions by certain judges; providing for certain program volunteers; specifying amount of fee for certain visitation; providing for application of certain volunteers; requiring cooperation and development of certain information by certain state entities; listing certain information; providing for certain training for volunteers; providing for certain site locations; providing for a certain fee; requiring certain entities to provide a registry list and location sites for certain visitation; providing for certain record-keeping for certain time frame and information; providing for certain copying of materials; providing for development of certain forms by certain entities; requiring certain information on forms and brochure; requiring distribution of forms; requiring certain action under certain circumstances;

providing for promulgation of rules by certain entities; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of this act shall be known and may be cited as the "Bryar Wheeler Act".

SECTION 2. AMENDATORY 10 O.S. 2001, Section 1211, is amended to read as follows:

Section 1211. A. 1. The Supreme Court is required to establish by rule, education and training requirements for judges, associate judges, special judges, and referees who have juvenile court docket responsibility. Included in the training and education requirements shall be workshops related to safe supervised visitation arrangements and standards for the child and parties involved in the visitation. Supervised visitation training should emphasize situations when alcohol or drug dependency or substantial mental illness of the visiting parent is evident or suspected.

2. The Administrative Director of the Courts shall be responsible for developing and administering procedures and rules for such courses for judicial personnel.

B. All judges having juvenile or domestic docket responsibility shall attend at least twelve (12) hours of training per year pertinent to issues relating to juvenile law, child abuse and neglect, domestic abuse issues and other issues relating to children such as foster care and parental divorce, including, but not limited to, safe supervised visitation arrangements and standards for the child and parties involved in such visitation. Supervised visitation training should emphasize situations when alcohol or drug

dependency or substantial mental illness of the visiting parent is evident or suspected. The Administrative Office of the Courts shall monitor the attendance of judges having juvenile docket responsibility at such training.

C. For purposes of this section:

1. "Supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence; and

4. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgement or capacity to recognize reality or to control behavior that would threaten the health, safety, or welfare of the child or other parties involved in such visitation.

D. District attorneys and assistant district attorneys whose duties include responsibility for the juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster

care and parental divorce. The District Attorneys Council shall be responsible for developing and administering procedures and rules for such courses for district attorneys and assistant district attorneys.

~~D.~~ E. Any public defender, or assistant public defender, whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The public defender shall be responsible for developing and administering procedures and rules for such courses.

~~E.~~ F. Any attorney employed by or under contract with the Oklahoma Indigent Defense System whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The Executive Director of the Oklahoma Indigent Defense System shall be responsible for developing and administering procedures and rules for such courses.

~~F.~~ G. Any court-appointed attorney or retained attorney whose duties routinely include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The chief judge of the judicial district for which a court-appointed attorney serves shall be responsible for developing and administering procedures and rules for such courses.

~~G.~~ H. Any court-appointed special advocate (CASA) available for appointment pursuant to the Oklahoma Children's Code ~~or~~, the Oklahoma Juvenile Code or the Oklahoma Child Supervised Visitation Program pursuant to Section 9 of this act shall complete education and training courses in juvenile law, child abuse and neglect and

other issues relating to children such as foster care and parental divorce, including, but not limited to, safe supervised visitation arrangements and standards for the child and parties involved in such visitation. Supervised visitation training should emphasize when alcohol or drug dependency or substantial mental illness of the visiting parent is evident or suspected. The chief judge of the judicial district for which a court-appointed special advocate serves shall be responsible for developing and administering procedures and rules for such courses.

~~H.~~ I. The training and education programs required by this section shall be developed and provided by or in cooperation with the Child Abuse Training and Coordinating Council.

SECTION 3. 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. a. "Deprived child" means a child:

~~a.~~

(1) who is for any reason destitute, homeless, or abandoned,

~~b.~~

(2) 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.~~

(3) 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.~~

(4) 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.~~

(5) 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.~~

(6) whose custodial parent is an alcohol-dependent person and/or a drug-dependent person and/or has a substantial mental illness. For purposes of this division:

(a) an "alcohol-dependent person" is one who uses alcoholic beverages to such an extent

that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child,

(b) a "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence, and

(c) "substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior that would threaten the health, safety, or welfare of the child or other parties involved in such visitation, or

(7) 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.

b. 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 4. AMENDATORY 10 O.S. 2001, Section 7102, is amended to read as follows:

Section 7102. A. 1. It is the policy of this state to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for health, safety or welfare of such children.

2. It is the policy of this state that in responding to a report of child abuse or neglect, in any necessary removal of a child from the home, in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act and in any

administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act, the best interests of the child shall be of paramount consideration.

B. Except as otherwise provided by and used in the Oklahoma Child Abuse Reporting and Prevention Act:

1. "Abuse" means:

- a. harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare including sexual abuse and sexual exploitation, or
- b. harm or threatened harm to a child's health, safety, or welfare by a person responsible for the child's health, safety, or welfare because of alcohol dependency or drug dependency or substantial mental illness;

2. "Alcohol-dependency" means a person who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child;

3. "Harm or threatened harm to a child's health or safety" includes, but is not limited to:

- a. nonaccidental physical or mental injury,
- b. sexual abuse,
- c. sexual exploitation,
- d. neglect,
- e. failure or omission to provide protection from harm or threatened harm, or
- f. abandonment;

~~3.~~ 4. "Neglect" means failure or omission to provide:

- a. adequate food, clothing, shelter, medical care, and supervision,

- b. special care made necessary by the physical or mental condition of the child, or
- c. abandonment;

~~4.~~ 5. "Child" means any person under the age of eighteen (18) years 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.~~ 6. "Drug-dependency" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

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

~~6.~~ 8. "Sexual abuse" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare;

~~7.~~ 9. "Sexual exploitation" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the

child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's health, safety or welfare;

~~8.~~ 10. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior that would threaten the health, safety, or welfare of the child or other parties involved in such visitation;

11. "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 or neglect cases and who are qualified to facilitate a broad range of interventions and services related to child abuse or neglect;

~~9.~~ 12. "Child advocacy center" means an entity that is a full member in good standing with the National Children's Alliance;

~~10.~~ 13. "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 the 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;

~~11.~~ 14. "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 the child's health or safety. An investigation includes, but is not limited to, the following elements:

- a. an evaluation of the child's safety or welfare,
- 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;

~~12.~~ 15. "Services not needed determination" means a report in which a child protective services worker, after an investigation, determines that there is no identified risk of abuse or neglect;

~~13.~~ 16. "Services recommended determination" means a report in which a child protective services worker, after an investigation, determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services;

~~14.~~ 17. "Confirmed report - services recommended" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required;

~~15.~~ 18. "Confirmed report - court intervention" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened;

~~16.~~ 19. "Child protective services worker" means a person employed by the Department of Human Services with sufficient

experience or training as determined by the Department in child abuse prevention and identification;

~~17.~~ 20. "Department" means the Department of Human Services;

~~18.~~ 21. "Commission" means the Commission for Human Services;

and

~~19.~~ 22. "Prevention and intervention-related services" means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect.

SECTION 5. AMENDATORY 43 O.S. 2001, Section 107.3, is amended to read as follows:

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

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

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

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or

with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

- (3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or
- b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

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

C. As used in this section:

1. "Child abuse" means:

- a. that a child has been physically, emotionally, or psychologically abused by a parent,
- b. that a child has been:
 - (1) sexually abused by a parent through criminal sexual penetration, incest, or criminal sexual contact of a minor as those acts are defined by state law, or
 - (2) sexually exploited by a parent through allowing, permitting, or encouraging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law,

- c. that a child has been knowingly or intentionally or negligently placed in a situation that may endanger the child's life or health, ~~or~~
- d. that a parent or custodial parent whose alcohol or drug dependency or substantial mental illness has placed a child in a situation that may endanger the child's life or health, or
- e. that a child has been knowingly or intentionally tortured, cruelly confined, or cruelly punished; provided, that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph; and

2. "Domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional, or psychological harm to the other parent.

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

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

SECTION 6. AMENDATORY 43 O.S. 2001, Section 112.2, is amended to read as follows:

Section 112.2 A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse, alcohol or drug dependency or substantial mental illness which is properly brought before it. If the occurrence of ongoing domestic abuse, alcohol or drug dependency or substantial mental illness is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

B. 1. If during the custody proceedings the court finds that alcohol or drug dependency is evident or suspected, or if a party admits to having an alcohol or drug dependency, or if a party has been convicted of a felony over the past three (3) years involving alcohol or drug usage, unless the parent submits to the judge sufficient evidence of completion of such a program, the court shall require such party to attend and complete a drug treatment program. Such information shall be reported in the court record.

2. The court may also require periodic reviews or status reports concerning treatment services.

C. For purposes of this section:

1. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child;

2. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which

include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

3. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgement or capacity to recognize reality or to control behavior; and

4. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1a of Title 43, unless there is created a duplication in numbering, reads as follows:

It is the policy of this state to ensure that the health, safety, and welfare of the child is paramount when supervised visitation is ordered by the court in situations where alcohol or drug dependency or substantial mental illness of the parent visiting the child is evident.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1b of Title 43, unless there is created a duplication in numbering, reads as follows:

A. 1. If the occurrence of ongoing alcohol or drug dependency or substantial mental illness is established by clear and convincing evidence or if a party has been convicted of a felony over the past three (3) years involving alcohol or drug usage, unless the parent submits to the judge sufficient evidence of completion of a treatment program, there shall be a rebuttable presumption that it is not in the best interests of the child to have unsupervised visitation granted to a parent.

2. When there has been established by clear and convincing evidence that a parent has an alcohol or drug dependency or substantial mental illness, or if a party has been convicted of a felony over the past three (3) years involving alcohol or drug usage, unless the parent submits to the judge sufficient evidence of completion of a treatment program, but the court believes that granting visitation to such parent is in the best interests of the child, the court shall order supervised visitation.

3. For purposes of this section:

- a. "supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child,
- b. an "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child,
- c. a "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence, and
- d. "substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and

significantly impairs judgement or capacity to recognize reality or to control behavior that would threaten the health, safety, or welfare of the child or other parties involved in such visitation.

B. If supervised visitation is not ordered pursuant to this section, the court shall document in the court record the reason as to why this determination was made.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1c of Title 43, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known as the "Oklahoma Child Supervised Visitation Program".

B. 1. The associate district judge in each county within this state shall select trained volunteers making application with the court clerk to assist in the Oklahoma Child Supervised Visitation Program. Volunteers may include, but are not limited to, personnel from county sheriffs' offices, State Department of Health child guidance centers, Department of Human Services, Department of Mental Health and Substance Abuse Services, social service agencies, police departments and court-appointed special advocates' offices.

2. The associate district judge in each county within this state shall authorize one or more public or private agencies to provide agency location sites for the Oklahoma Child Supervised Visitation Program. Eligible governmental agencies shall include, but not be limited to, county sheriffs' offices, Department of Human Services centers, State Department of Health child guidance centers, social service agencies and police departments. A participating agency location site may charge a fee not to exceed Twenty Dollars (\$20.00) per visitation.

C. 1. The agency location site personnel shall include a log for each participant requesting supervised visitation participating in the supervised visitation program which must be signed by each

participant at the time of arrival and departure. The agency location site must have an employee assigned to verify identification of each participant, initial each signature, and record the time of each person's arrival and departure. Information contained in the log at the agency shall include but not be limited to:

- a. a requirement that a copy of the order be given to the parent having supervised visitation, the custodian of the child, and the agency location site,
- b. a determination of who is authorized to pick up or deliver a child to the agency location site for supervised visitation. The list may include, but is not limited to, parents, stepparents, guardian and grandparents,
- c. a determination of when the participants shall meet to pick up or deliver a child to the agency location site for supervised visitation. This decision shall include specific days of the week and time periods,
- d. the date when participation in the program shall begin or end, and
- e. a requirement that the participant delivering the child must wait at the agency location site and sign out after the participant picking up the child has departed from the agency.

2. Supervised visitation made pursuant to the Oklahoma Child Supervised Visitation Program shall be rebuttable presumptive proof of compliance with court-ordered supervised visitation.

D. Volunteers wanting to participate in the Oklahoma Child Supervised Visitation Program shall make application on forms located at the district court clerks' offices.

E. The Department of Mental Health and Substance Abuse Services or the Department of Human Services may provide training to volunteers wanting to assist in the supervised visitation program.

F. The Office of the Court Administrator with the assistance of the Department of Mental Health and Substance Abuse Services and the Department of Human Services shall develop an application form for volunteers applying for the Oklahoma Child Supervised Visitation Program. Information listed on the form shall include, but not be limited to:

1. Name, address and phone number of the volunteer;
2. Volunteer's place of employment and phone number;
3. Areas of expertise;
4. Listing of professional training in areas including child abuse, domestic abuse, alcohol or drug abuse, mental illness or conflict management;
5. Consent form specifying release of information; and
6. Professional references.

G. After development of volunteer application forms, the Office of the Court Administrator shall disseminate copies to court clerks' offices across the state.

H. Once a volunteer has completed the application form, the court clerk's office shall forward the completed volunteer application form to the Office of the Court Administrator.

I. The Office of the Court Administrator is required to retain an ongoing registry list of volunteers and supervised visitation agency location sites.

J. The Office of the Court Administrator, with the assistance of the Department of Mental Health and Substance Abuse Services, and the Department of Human Services shall develop standard operating procedures, guidelines indicating the amount of training needed for volunteers, a list of volunteers, and supervised visitation agency location sites.

K. The Office of the Court Administrator with the assistance of Department of Human Services and the Department of Mental Health and Substance Abuse Services shall develop an informational brochure outlining the provisions of the Oklahoma Child Supervised Visitation Program and procedures to be used by volunteers. The brochure may be distributed through municipal and district courts, social service agency centers, county health departments, hospitals, crisis or counseling centers, and community action agencies.

L. The Office of the Court Administrator, the Board of Mental Health and Substance Abuse Services, and the Commission for Human Services shall promulgate any rule necessary to implement the provisions of this section.

M. For purposes of this section:

1. "Supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the child;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence; and

4. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that

demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior that would threaten the health, safety, or welfare of the child or other parties involved in such visitation.

SECTION 10. Section 9 of this act shall become effective December 15, 2002.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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