

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1661

By: Cain

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Sections 7003-4.7, 7003-5.6, 7003-5.6d and 7209, which relate to the Oklahoma's Children's Code; expanding circumstances and specifying time frames under which a district attorney is required to file a petition for termination of parental rights; modifying time frame for judicial review of case of child alleged or adjudicated to be deprived; clarifying time frames within which the court shall conduct a permanency hearing on behalf of a child; requiring written permanency decisions in accordance with the health, safety or welfare and long-term best interests of the child; requiring a determination of the most suitable permanency plans based on specified factors; requiring certain judicial determinations; requiring approval of a plan for guardianship or kinship guardianship; specifying contents of certain order; requiring court to enter certain order; specifying conditions and terms under which the Department of Human Services may place a child in an emergency situation; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-4.7, is amended to read as follows:

Section 7003-4.7 A. ~~Except as otherwise provided by this section, the~~ The district attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or, ~~if a petition has been filed,~~ shall join in the petition, if filed by the child's attorney, ~~pursuant to~~ in any of the following circumstances:

1. ~~The~~ Prior to the end of the fifteenth month when 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 date of adjudication as a deprived child, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

2. ~~The~~ Prior to the end of the fifteenth month when a child has been placed in foster care by the Department of Juvenile Justice or in a child-care institution, as defined in Section 472(c)(2) of the Social Security Act, by the Department of Juvenile Justice 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 date of disposition as a delinquent, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

3. ~~The~~ No later than sixty (60) days after a child has been judicially determined to be an abandoned infant;

4. ~~A~~ No later than sixty (60) days after a court has determined that ~~the~~ reasonable efforts to reunite are not required due to a felony conviction of a parent who has:

- a. committed the murder of any child or has aided or abetted, attempted, conspired in, or solicited the commission of the murder of any child~~†,~~

~~5. A court has determined that the parent has~~

- b. committed voluntary manslaughter of another child of the parent, or has aided or abetted, attempted, conspired in, or solicited the commission of voluntary manslaughter of another child of the parent~~†,~~  or

~~6. A court has determined that the parent has~~

- c. committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent.

B. If any of the following conditions exist, the district attorney is not required to file a petition as provided in subsection A of this section for a deprived child:

1. At the option of the Department of Human Services or by order of the court, the child is properly being cared for by a relative;

2. The Department of Human Services has documented in the child's case plan that is provided or available to the court a compelling reason for determining that filing the petition would not be in the best interests of the child; or

3. The state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child.

C. If any of the following conditions exist, the district attorney is not required to file a petition as provided in subsection A of this section for a delinquent child:

1. At the option of the Department of Juvenile Justice or by order of the court, the child is properly being cared for by a relative; or

2. The Department of Juvenile Justice has documented in the child's case plan that is provided or available to the court a compelling reason for determining that filing the petition would not be in the best interests of the child.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-5.6, is amended to read as follows:

Section 7003-5.6 A. ~~Pursuant to the provisions of Section 7003-5.5 of this title, every disposition order~~ Every case regarding a child alleged or adjudicated to be deprived shall be reviewed by the court at a hearing ~~at least once every~~ no later than six (6) months from the date of the child's out-of-home placement and at

least once every six (6) months thereafter. A child shall be considered to have entered an out-of-home placement on the earlier of the adjudication date or the date that is sixty (60) days after the date on which the child is removed from the home. Such reviews shall continue until such time as:

1. The conditions which caused the child to be adjudicated have been corrected;

2. The parental rights of the parent are terminated and a final adoption decreed or the child is placed with a suitable custodian or kinship guardian; or

3. Until the court otherwise terminates jurisdiction.

B. The provisions of this section shall also apply to a child who has been removed from the home of the parent or parents, legal guardian or custodian of the child after the child has been returned to that home.

C. The court may set a case for a review hearing upon the motion of a party at any time, if the hearing is deemed by the court to be for the health, safety or welfare of the child and in the best interests of the child.

D. In addition to the parties, adequate prior written notice of review hearings, as determined by the Department pursuant to rules promulgated by the Commission for Human Services, shall be provided by the Department to the current foster parents and an opportunity to be heard at such hearings shall be provided by the court to the current foster parent of a child, the child's guardian ad litem, and to any preadoptive parent or relative providing care for the child. Such notice and opportunity to be heard shall not be construed as requiring any foster parent, preadoptive parent or relative to be made a party to such deprived proceedings if not currently a party to the action.

E. The court shall receive all evidence helpful in deciding the issues before the court, including, but not limited to, oral and

written reports, which may be admitted and relied upon to the extent of their probative value, even though not competent for purposes of an adjudicatory hearing.

F. At each review hearing, the court shall:

1. Determine whether:

a. the child should be returned to the child's parent or placed with willing and suitable kinship relations.

Before a return to the child's parent is ordered, the court must find that the parties:

- (1) have complied with, performed, and completed the terms and conditions of the individual treatment and service plan which are essential and fundamental to the health, safety or welfare of the child as determined by the court,
- (2) have corrected those conditions which caused the child to be adjudicated and which the court determines to be essential and fundamental to the health, safety or welfare of the child,
- (3) have made marked progress towards reunification with the child, and
- (4) have maintained a close and positive relationship with the child.

b. the child should continue in out-of-home placement for a specified period. The court shall project a likely date by which the child may be:

- (1) returned to and safely maintained in the home,
- (2) placed with a willing and suitable guardian or custodian, or
- (3) placed for adoption, or other permanent arrangement,

c. the rights of the parent of the child should be terminated and the child placed for adoption, placed

with a guardian, custodian or provided with another permanent arrangement, or

- d. the child, because of exceptional circumstances, should remain in long-term out-of-home placement as a permanent plan or with a goal of independent living;

2. Make a determination:

- a. as to whether reasonable efforts have been made to provide for the safe return of the child to the child's own home. In determining reasonable efforts, the child's health, safety or welfare shall be the paramount concern. If the court determines or has previously determined that reasonable efforts are not required pursuant to the provisions of Section 7003-4.6 of this title or that continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan for the child, the court shall determine if reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and to complete steps necessary to finalize permanent placement for the child, and
- b. where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the child in making the transition from foster care to independent living; and

3. Determine the safety of the child and consider fully all relevant prior and current information including, but not limited to, the report or reports submitted pursuant to Sections 7208 and 7003-5.6a of this title;

4. Inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional services be provided if necessary to ensure the

safety of the child and to protect the child from further physical, mental, or emotional harm or to correct the conditions that led to the adjudication; and

5. Order such modification to the existing individual treatment and service plan as the court determines to be in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7003-5.6d, is amended to read as follows:

Section 7003-5.6d A. 1. The court shall conduct a permanency hearing ~~pursuant to this section to consider the issue of permanency for the~~ on behalf of a child no later than:

- a. twelve (12) months after placing ~~a~~ the child in out-of-home placement and every twelve (12) months thereafter, or and
- b. thirty (30) days after a determination by the court that reasonable efforts are not required pursuant to the provisions of Section 7003-4.6 of this title and every twelve (12) months thereafter.

2. A child shall be considered to have entered out-of-home placement 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. A permanency hearing may be held concurrently with a dispositional or review hearing. ~~During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the permanency hearing, the court shall enter written findings and make a determination which will best serve the long-term interests of the child's health, safety or welfare~~ All permanency decisions must be in writing and in accordance with the

health, safety or welfare of the child and the long-term best interests of the child.

C. In addition to the parties, adequate prior written notice of a permanency hearing and an opportunity to be heard at such hearing shall be provided by the Department of Human Services to the present foster parents of a child, the child's guardian ad litem, and to any preadoptive parent or relative providing care for the child. Such notice and opportunity to be heard shall not be construed as requiring any foster parent, preadoptive parent or relative to be made a party to such action.

D. At the ~~permanency~~ hearing, the court shall ~~consider at a minimum, for the health, safety or welfare of the child and in the best interests of the child,~~ determine the most suitable permanency plan based on the child's need for a permanent placement as indicated by the recommended permanency plan or other evidence submitted. The court shall determine whether:

1. The child should ~~continue in out-of-home placement for a specified period;~~

2. ~~The child should be returned home. If returning home remains the plan for the~~ be returned home immediately or by a specified date not to exceed three (3) months. An order entered pursuant to the provisions of this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which must occur by the specified date before the child may be returned home. Before a child may be returned home, the court must find that:

- a. the parent, legal guardian or custodian has made marked progress towards reunification with the child, and has maintained a close and positive relationship with the child, and
- b. the parties have complied with, performed, and completed ~~the~~ those terms and conditions of the court-

ordered individual treatment and service plan ~~which are essential and fundamental to the health, safety or welfare of the child, as determined by the court,~~ and have corrected ~~the~~ those conditions which caused the child to be adjudicated,

~~e. the parent, legal guardian or custodian has maintained a close and positive relationship with the child, and~~

~~d. the child is likely to return home within the near future pursuant to the provisions of subsection E of this section~~ which are essential and fundamental to the health, safety and welfare of the child;

2. A plan for the guardianship or kinship guardianship of the child should be approved;

3. The child should be placed in a planned permanent living arrangement if the Department has documented a compelling reason for the court to determine that it would not be in the best interests of the child to return home, or be placed for adoption or with a fit and willing relative or a legal guardian;

4. A petition to terminate the rights of the parents of the child will be filed and the child placed for adoption; or

5. ~~If the child has been placed in an~~ Any other out-of-home placement, ~~the placement~~ in which the child is placed continues to be safe and appropriate and in the best interests of the child.

~~E. At the permanency hearing, the court shall enter an order to:~~

~~1. Return the child to the child's home;~~

~~2. Set a specific date for the return of the child and continue placement of the child for an additional period of time not to exceed three (3) months, at which time the court shall hold a hearing to consider modification of its permanency order; provided, however, an order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which~~

~~must occur within the additional three month period before the child may be returned to the home. The reasons for any such extension shall be placed in the record of the court;~~

~~3. Approve the plan for the guardianship or kinship guardianship of the child;~~

~~4. Order the placement of the child in a planned permanent living arrangement if the Department has documented a compelling reason for the court to determine that it would not be in the best interests of the child to be returned home or to be placed for adoption or with a fit and willing relative or a legal guardian; or~~

~~5. Complete all steps necessary to finalize the permanent placement of the child.~~

The court shall enter an order for completion of all steps necessary to finalize the permanent placement of the child.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7209, is amended to read as follows:

Section 7209. A. 1. Except as otherwise provided by law, the Department of Human Services or the Department of Juvenile Justice shall not place a child in out-of-home placement prior to completion of a foster parent eligibility assessment on the foster parent applicant and completion of a national criminal history records search based upon submission of fingerprints for any adult residing in the home, as required by the Oklahoma Child Care Facilities Licensing Act and the Oklahoma Foster Care and Out-of-Home Placement Act; provided, however, the state agencies may place a child in the home of a foster parent, pending completion of the national criminal history records search, if the foster parent and every adult residing in the home of the foster parent have resided in this state for at least five (5) years immediately preceding placement. The director of such state agency or designee may authorize an exception to the fingerprinting requirement for any person residing in the

home who has a severe physical condition which precludes such person's being fingerprinted.

2. a. The Department of Human Services shall be the lead agency for disseminating fingerprint cards for obtaining and requesting a national criminal history records search based upon submission of fingerprints from the Oklahoma State Bureau of Investigation.
- b. The Department of Juvenile Justice, courts and child-placing agencies may request the Department of Human Services to obtain from the Oklahoma State Bureau of Investigation a national criminal history records search based upon submission of fingerprints for foster parents and other persons requiring such search pursuant to the Oklahoma Child Care Facilities Licensing Act and the Oklahoma Foster Care and Out-of-Home Placement Act. Any fees charged by the Oklahoma State Bureau of Investigation or the Federal Bureau of Investigation for such searches shall be paid by the requesting entity.
- c. The Department of Human Services shall contract with the Oklahoma State Bureau of Investigation to obtain national criminal history records searches based upon submission of fingerprints.
- d. (1) If the Department of Human Services is considering placement of a child with an individual in an emergency situation and after normal business hours, the Department may request local law enforcement to conduct a criminal history records search based upon submission of the individual's name, race, sex, date of birth and social security number.

(2) Within five (5) business days of the name-based search, the Department shall submit fingerprints on the individual to the Oklahoma State Bureau of Investigation. In the event the individual refuses to submit to a name-based or fingerprint search, the Department shall either not place or shall remove the child from the individual's home.

e. Upon request for a national criminal history records search based upon submission of fingerprints, the Oklahoma State Bureau of Investigation shall forward one set of fingerprints to the Federal Bureau of Investigation for the purpose of conducting such a national criminal history records search.

3. The Department of Human Services, pursuant to Section 7003-5.3 of this title, and the Department of Juvenile Justice, pursuant to Section 7303-5.2 of this title, shall conduct an assessment of each child in its custody which shall be designed to establish an appropriate treatment and service plan for the child.

B. 1. A child-placing agency may place a child who is in the custody of the agency in out-of-home placement if a foster parent eligibility assessment or a national criminal history records search based upon submission of fingerprints has been completed for each individual residing in the home in which the child will be placed, as required pursuant to the Oklahoma Child Care Facilities Licensing Act or the Oklahoma Foster Care and Out-of-Home Placement Act; provided, however, the child-placing agency may place a child in a foster family home pending completion of the national criminal history records search if the foster parent and every adult residing in the home have resided in this state for at least five (5) years immediately preceding the placement. Upon the request of a child-placing agency, the directors of the state agencies or designees may

authorize an exception to the fingerprinting requirement for any person residing in the foster home who has a severe physical condition which precludes such person's being fingerprinted.

2. In addition, a satisfactory assessment of the out-of-home placement shall be conducted by the child-placing agency prior to foster placement.

C. 1. Whenever a court awards custody of a child to an individual or a child-placing agency other than the Department of Human Services or the Department of Juvenile Justice, for placement of the child, the court shall:

- a. require that when custody is placed with an individual, a foster family eligibility assessment be conducted for the foster parents prior to placement of the child, and
- b. require that if custody is awarded to a child-placing agency, a foster family eligibility assessment be conducted as required by the Oklahoma Child Care Facilities Licensing Act.

2. A child-placing agency other than the Department of Human Services or the Office of Juvenile Affairs shall, within thirty (30) days of placement, provide for an assessment of the child for the purpose of establishing an appropriate treatment and service plan for the child. The court shall require the treatment and service plan to be completed in substantially the same form and with the same content as required by the Oklahoma Children's Code for a deprived child or as required by the Juvenile Justice Code for a delinquent child or a child in need of supervision.

3. The child shall receive a complete medical examination within thirty (30) days of initial placement unless a medical examination was conducted on the child upon the removal of the child and the court finds no need for an additional examination.

4. The child may receive such further diagnosis and evaluation as necessary as determined by the court to preserve the physical and mental well-being of the child.

D. 1. When the court awards custody of a child to an individual or a child-placing agency as provided by this subsection, the individual or child-placing agency shall be responsible for the completion of and costs of the national criminal history records search based upon submission of fingerprints, the foster parent eligibility assessment, the preparation of a treatment and service plan, and the medical examination required by this subsection.

2. The Department of Human Services and the Department of Juvenile Justice shall be responsible for the completion of and costs of the foster parent eligibility assessment and any national criminal history records search based upon submission of fingerprints, preparation of a treatment and service plan, and the medical examination required by this subsection only for the children placed in the custody of the state agency. The state agency may provide for reimbursement of such expenses, costs and charges so incurred pursuant to the Oklahoma Children's Code and the Juvenile Justice Code, as applicable.

E. 1. Upon any voluntary out-of-home placement of a child by a parent into foster care with a child-placing agency, the child-placing agency shall conduct an assessment of the child in its custody which shall be designed to establish an appropriate plan for placement of the child. Following the assessment, the child-placing agency shall establish an individual treatment and service plan for the child. A copy of each plan shall be provided to the child if the child is twelve (12) years of age or older and to the child's parent or guardian. The plan shall at a minimum:

- a. be specific,
- b. be in writing,

- c. be prepared by the agency in conference with the child's parents,
- d. state appropriate deadlines,
- e. state specific goals for the treatment of the child,
- f. describe the conditions or circumstances causing the child to be placed in foster care,
- g. describe the services that are necessary to remedy and that have a reasonable expectation of remedying the conditions or circumstances causing the child to be placed in foster care,
- h. state to whom the services will be delivered and who will deliver the services, and
- i. prescribe the time the services are expected to begin and the time within which expected results can reasonably be accomplished.

2. The child shall receive a complete medical examination within thirty (30) days of placement in foster care.

F. The child may receive such further diagnosis and evaluation as is necessary to preserve the physical and mental well-being of the child.

G. Subsequent to initial placement, the child placed in foster placement shall have a medical examination, at periodic intervals, but not less than once each year.

H. Prior to any proposed counseling, testing or other treatment services, the court or child-placing agency shall first determine that the proposed services are necessary and appropriate.

I. 1. If the assessment and medical examination disclose no physical, mental or emotional reasons for therapeutic foster care, a child voluntarily placed with a child-placing agency shall be placed in a regular foster family home. If therapeutic foster care is required, the child may be placed only in foster homes that are

certified as therapeutic foster homes pursuant to the Oklahoma Child Care Facilities Licensing Act.

2. No child shall be eligible for any reimbursement through the state Medicaid program for placement in therapeutic foster care unless such placement has been reviewed and approved pursuant to rules regarding medical necessity for therapeutic foster care placement promulgated by the Oklahoma Health Care Authority Board.

SECTION 5. This act shall become effective November 1, 2002.

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CJ

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