

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1064

By: Gilbert of the House

and

Corn of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 21.1, as last amended by Section 3 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, which relates to custody, guardianship and visitation of children; modifying certain requirements for noncustodial parents; updating language; requiring courts to make certain determinations; adding circumstances that shall constitute a rebuttable presumption; prohibiting certain visitation; requiring certain reasons be placed on record; defining terms; amending 10 O.S. 2001, Sections 7102, as amended by Section 1, Chapter 487, O.S.L. 2002 and 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2002, Sections 7102 and 7115), which relate to the Oklahoma Child Abuse Reporting and Prevention Act; updating, adding and modifying terms; increasing certain fines; modifying certain definitions; amending 21 O.S. 2001, Section 852.1, which relates to child endangerment; increasing certain fines; amending 43 O.S. 2001, Section 112.2, as last amended by Section 25 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, which relates to evidence of ongoing domestic abuse; expanding consideration of court in certain situations; removing requirement for ongoing domestic abuse designation; providing for certain evidence; providing for court determinations; providing for a rebuttable presumption under certain circumstances; providing for certain reviews by court; defining certain terms; adding circumstances that shall constitute a rebuttable presumption; providing for the ordering of supervised visitation of a child in certain situation for certain persons; prohibiting visitation in certain instances; providing certain information to be contained in court record; defining certain terms; amending 10 O.S. 2001, Section 7305-1.1, which relates to juvenile bureaus; modifying counties in which juvenile bureaus and citizens' advisory committees are created; amending 21 O.S. 2001, Section 644, which relates to punishment for certain assaults and batteries; amending 22 O.S. 2001, Section 60.6, which relates to the Protection

from Domestic Abuse Act; updating language; adding to list of persons against whom someone commits domestic abuse; modifying penalties for certain offenses; modifying subsequent offenses and crimes committed in presence of child; requiring certain counseling or treatment; requiring certification of certain programs; requiring certain evaluations; making certain programs not qualified; providing for review hearings; providing purpose; providing for subsequent or other review hearings; providing penalty for noncompliance; requiring certain attendance; clarifying language; authorizing certain reports in lieu of attendance reports; defining term; providing for jurisdiction; providing immunity for certain orders, courts and judges; specifying reasons; prohibiting certain fees or costs to certain persons; requiring certain past history information be available to the court; modifying content of certain orders; amending 10 O.S. 2001, Section 1505, as amended by Section 1 of Enrolled Senate Bill No. 742 of the 1st Session of the 49th Oklahoma Legislature, which relates to court-appointed special advocates; clarifying authority of court relating to clarifying duties of certain counties and certain programs; modifying program requirements; providing for county funding or supplement of certain salaries; authorizing office space; removing certain reimbursement and expenditure requirements; defining term; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 3 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 21.1 A. ~~Custody~~ Except as otherwise provided by this section, custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:

1. A parent or to both parents jointly ~~except as otherwise provided in subsection B of this section;~~
2. A grandparent;
3. A person who was indicated by the wishes of a deceased parent;
4. A relative of either parent;

5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or

6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

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

1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:

- (1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
- (2) according to such parent's financial ability to contribute to the child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and

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

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

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

4. ~~The noncustodial parent has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or~~

~~any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;~~

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

~~6.~~ 5. The court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The court ~~may~~ shall consider the preference of the child in awarding custody of the child ~~if the child is of sufficient age to form an intelligent preference pursuant to Section 113 of Title 43 of the Oklahoma Statutes.~~

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

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

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

- b. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
 - c. has been convicted of a felony involving drug or alcohol abuse within the past five (5) years,
 - d. has been convicted of domestic abuse within the past five (5) years,
 - e. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, ~~or~~
 - ~~e.~~ f. is residing with a person who has been ~~previously~~ convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
 - g. is residing with a person who has been convicted of domestic abuse within the past five (5) years.
2. a. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to:
- ~~a.~~ (1) a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
 - ~~b.~~ (2) a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
 - (3) a person who has been convicted of a felony involving drug or alcohol abuse within the past five (5) years,

(4) a person who has been convicted of domestic abuse within the past five (5) years,

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

~~or~~ (6) a person who is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or

(7) a person who is residing with a person who has been convicted of domestic abuse within the past five (5) years.

b. If the court determines that unsupervised visitation is in the best interests of the child, the court shall document in the court record the reason as to why this determination was made.

3. Custody of, guardianship of, or any visitation with a child shall not be granted to any person if it is established by clear and convincing evidence that custody, guardianship or visitation will likely expose the child to an imminent risk of material harm.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7102, as amended by Section 1, Chapter 487, O.S.L. 2002 (10 O.S. Supp. 2002, 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 the 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:

- a. in any necessary removal of a child from the home,
- b. in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, and
- c. in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act,

that 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 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 but not limited to sexual abuse and sexual exploitation;

2. ~~"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

"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;

3. ~~"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. "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;

4. "Child advocacy center" means an entity that is a full member in good standing with the National Children's Alliance. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:

- a. nonurban centers in districts with child populations that are less than sixty thousand (60,000),
- b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and
- c. urban centers in Oklahoma and Tulsa Counties;

5. ~~"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~~ "Child endangerment" means knowingly permitting physical or sexual abuse of a child or knowingly permitting a child to be present at a location

where controlled dangerous substances are being manufactured or attempted to be manufactured;

6. ~~"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~~ "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;

7. ~~"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~~ "Commission" means the Commission for Human Services;

8. ~~"Multidisciplinary child abuse team" means any team established pursuant to the provisions of Section 7110 of this title~~ "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;

9. ~~"Child advocacy center" means an entity that is a full member in good standing with the National Children's Alliance. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:~~

- a. ~~nonurban centers in districts with child populations that are less than sixty thousand (60,000),~~

- ~~b. mid-level nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and~~
- ~~e. urban centers in Oklahoma and Tulsa Counties~~

"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;

10. ~~"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~~

"Department" means the Department of Human Services;

11. "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,
- f. abandonment, or
- g. child endangerment;

12. "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. "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. "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~~ "Multidisciplinary child abuse team" means any team established pursuant to the provisions of Section 7110 of this title;

~~14. "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~~
"Neglect" means failure or omission to provide:

- a. adequate food, clothing, shelter, medical care, and supervision, or
- b. special care made necessary by the physical or mental condition of the child;

15. ~~"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~~
"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;

16. ~~"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~~
"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;

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

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

19. ~~"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~~ "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; and

20. "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 law, by a person responsible for the child's health, safety or welfare.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7115), is amended to read as follows:

Section 7115. A. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in child abuse shall, upon conviction thereof, be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, "child abuse" means ~~the~~ willful or malicious "child abuse", as such term is defined by ~~paragraph 1~~

~~of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

B. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in enabling child abuse shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) or both such fine and imprisonment.

2. As used in this subsection, 7:

a. "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, ~~as defined by paragraph 1 of subsection B of Section 7102 of this title,~~ of a child under eighteen (18) years of age by another. ~~As used in this subsection, and~~

b. "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

C. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in child neglect shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, "child neglect" means ~~the~~ willful or malicious "neglect", as such term is defined by ~~paragraph 3 of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

D. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in enabling child neglect shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, 7:

a. "enabling child neglect" means the causing, procuring or permitting of a ~~the~~ willful or malicious act of ~~child~~ "neglect", as defined by ~~paragraph 3 of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. ~~As used in this subsection,~~ and

b. "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in child sexual abuse shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such

fine and imprisonment, except as provided in Section ~~3~~ 51.1a of ~~this act~~ Title 21 of the Oklahoma Statutes.

2. As used in this ~~section~~ subsection, "child sexual abuse" means the willful or malicious "sexual abuse", as defined by ~~paragraph 6 of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

F. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in enabling child sexual abuse shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, 7:

a. "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of ~~child~~ "sexual abuse", as defined by ~~paragraph 6 of~~ subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. ~~As used in this subsection, and~~

b. "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

G. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in child sexual exploitation shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand~~

~~Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, "child sexual exploitation" means the willful or malicious "sexual exploitation", as defined by ~~paragraph 7 of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

H. 1. Any parent or other person who ~~shall~~ willfully or maliciously ~~engage~~ engages in enabling child sexual exploitation shall, upon conviction thereof, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or both such fine and imprisonment.

2. As used in this subsection, 7:

a. "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child "sexual exploitation", as defined by ~~paragraph 7 of~~ subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. ~~As used in this subsection, and~~

b. "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 852.1, is amended to read as follows:

Section 852.1 A. ~~A~~ 1. Any person who is not the parent, guardian, or person having custody or control over a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes, commits child endangerment when:

a. the person knowingly permits physical or sexual abuse of a child, or ~~who~~

b. knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Section 2-101 of Title 63 of the Oklahoma Statutes. ~~However, it~~

2. It is an affirmative defense to this ~~paragraph~~ subsection if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.

~~B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title or Section 7006-1.1 of Title 10 of the Oklahoma Statutes.~~

~~C.~~ Any person convicted of violating any provision of this section shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 5. AMENDATORY 43 O.S. 2001, Section 112.2, as last amended by Section 25 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, 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

for determining the custody of, guardianship of or the visitation with a child:

~~1. Evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person;~~

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

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

~~a. is~~

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

~~b. is~~

~~2. Has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;~~

~~3. Has been convicted of a felony involving drug or alcohol abuse within the past five (5) years;~~

4. Has been convicted of domestic abuse within the past five (5) years;

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

~~e. is~~

6. Is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

B. 1. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person who ~~is~~:

~~1. Subject~~

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

~~2. Residing~~

b. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,

c. has been convicted of a felony involving alcohol or drug use within the past five (5) years,

d. has been convicted of domestic abuse within the past five (5) years,

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

~~3. Residing~~

f. is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or

g. is residing with a person convicted of domestic abuse within the past five (5) years.

2. If the court determines that unsupervised visitation is in the best interests of the child, the court shall document in the court record the reason as to why this determination was made.

C. Custody of, guardianship of, or visitation with a child shall not be granted to any person if it is established by clear and convincing evidence that the custody, guardianship or visitation will likely expose the child to an imminent risk of material harm.

SECTION 6. AMENDATORY 10 O.S. 2001, Section 7305-1.1, is amended to read as follows:

Section 7305-1.1 A. In each county having a population of ~~one hundred thousand (100,000)~~ eighty thousand (80,000) or more, as shown by the last preceding Federal Decennial Census, there is created a juvenile bureau and a citizens' advisory committee.

B. In each county having a duly constituted juvenile bureau as of January 1, ~~1981~~ 2004, as provided for in subsection A of this section, the juvenile bureau shall remain in place and continue in operation. No other counties shall establish juvenile bureaus.

C. The Department of Juvenile Justice shall provide intake, probation and parole services in all counties not having juvenile bureaus as provided for in Section 7302-2.3 of this title.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 644, is amended to read as follows:

Section 644. A. Assault shall be punishable by imprisonment in a county jail for a term not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail for a term not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

C. 1. Any person who commits any assault and battery against any of the following persons shall be deemed guilty of domestic abuse and shall be punished as provided by this subsection:

- a. a current or former spouse,
- b. a present spouse of a former spouse, ~~parents~~
- c. a parent,
- d. a foster parent,
- e. a child, ~~or~~ a person otherwise related by blood or marriage,
- f. a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes,
- g. an individual with whom the defendant has had a child,
- h. a person who formerly lived in the same household as the defendant, or
- i. a person living in the same household as the defendant ~~shall be guilty of domestic abuse.~~

2. a. Upon conviction of assault and battery against any person specified by this subsection, the defendant shall be punished by imprisonment in the county jail for a term not exceeding one (1) year, ~~or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment.~~

b. Any person convicted of domestic abuse ~~as defined in this subsection that was~~ committed in the presence of a child shall be ~~sentenced to~~ punished by imprisonment for a term not less than six (6) months in the county jail.

- c. In addition to the penalty provided by this paragraph, the defendant may be punished by imposition of a fine of not more than Three Thousand Dollars (\$3,000.00).
3. a. Any second or subsequent conviction of domestic abuse shall be a felony punishable by imprisonment.
- b. Any person convicted of a second or subsequent domestic abuse ~~as defined in this subsection that was~~ committed in the presence of a child shall be ~~sentenced to~~ guilty of a felony punishable by imprisonment for a term not less than one (1) year.
- ~~The~~
- c. In addition to the penalty provided by this paragraph, the defendant may be punished by a fine for a felony violation of this subsection shall of not be more than Five Thousand Dollars (\$5,000.00). ~~Every~~
4. a. For every conviction of domestic abuse, the court shall require specifically order as a condition of a suspended or deferred sentence or probation that the defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse pursuant to this paragraph.
- b. (1) The court shall either require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner and/or a domestic abuse counseling program approved by the court or a domestic abuse treatment program certified by the Department of Mental Health and Substance Abuse Services. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend for a minimum of twenty-five (25) weeks, finish

and be evaluated before and after attendance by a program counselor or a private counselor.

(2) A program for anger management shall not qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection.

c. (1) The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

(2) The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

d. The court may also set subsequent or other review hearings as the court determines necessary to assure the defendant attends and complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

e. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may immediately revoke all or any part of any suspended sentence, deferred sentence or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject

the defendant to any or all remaining portions of the original sentence.

f. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the defendant's progress from the individual counseling or the domestic abuse counseling or treatment program for the purposes of the review. There shall, generally, be no requirement for the victim to attend review hearings.

g. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

D. As used in this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present or is present within the same residence and may or could see or hear an act of domestic violence. For purposes of this subsection a child may be any child whether or not related to the victim or the defendant.

E. For the purposes of this subsection, any conviction for assault and battery against a:

1. A current or former spouse, ~~a;~~

2. A present spouse of a former spouse, ~~parents, a;~~

3. A parent;

4. A foster parent, ~~a;~~

5. A child, ~~or~~ a person otherwise related by blood or marriage, ~~a;~~

a;

6. A person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an;~~

7. An individual with whom the defendant has had a child, ~~a;~~

8. A person who formerly lived in the same household as the defendant, ~~i;~~ or any

9. Any person living in the same household as the defendant,
shall constitute a sufficient basis for a felony charge if that:

~~1. If that~~

a. conviction is rendered in any state, county or parish
court of record of this or any other state~~+~~, or

~~2. If that~~

b. conviction is rendered in any municipal court of
record of this or any other state for which any jail
time was served; provided, no conviction in a
municipal court of record entered prior to November 1,
1997, shall constitute a prior conviction for purposes
of a felony charge.

F. Any district court of the State of Oklahoma and any judge
thereof shall be immune from any liability or prosecution for
issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers, certified
by the Department of Mental Health and Substance Abuse Services;

2. Attend counseling or treatment services ordered as part of
any suspended or deferred sentence or probation; and

3. Attend, finish and be evaluated before and after attendance
by a treatment program for domestic abusers, certified by the
Department of Mental Health and Substance Abuse Services.

G. There shall be no charge of fees or costs to any victim of
domestic violence, stalking or sexual assault in connection with the
prosecution of the domestic violence, stalking or sexual assault
offense in the State of Oklahoma.

H. In the course of prosecuting any charge of domestic abuse,
stalking, harassment, rape or violation of a protective order, the
prosecutor shall provide the court, prior to sentencing or any plea
agreement, a local history and any other available history of past
convictions of the defendant within the last ten (10) years relating

to domestic abuse, stalking, harassment, rape, violation of a protective order and any other violent misdemeanors or felonies.

SECTION 8. AMENDATORY 22 O.S. 2001, Section 60.6, is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section, any person who:

1. Has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction thereof, be ~~deemed~~ guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

B. 1. Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and ~~without justifiable excuse~~ causes physical injury or physical impairment to the plaintiff or to any other person named in ~~said~~ the protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this ~~section~~ subsection, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. 1. In addition to any other penalty specified by this section, the court ~~may require a~~ shall order the defendant to undergo the treatment or participate in the counseling ~~services~~ necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

2. a. The court shall require the defendant to either participate in domestic abuse counseling or undergo treatment by an individual licensed practitioner and/or a domestic abuse counseling program approved by the court or a domestic abuse treatment program certified by the Department of Mental Health and Substance Abuse Services.

b. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend for a minimum of twenty-five (25) weeks, finish and be evaluated before and after attendance by a program counselor or a private counselor.

c. A program for anger management shall not qualify for the counseling or treatment required for domestic abuse pursuant to the provisions of this subsection.

E. Ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim ~~and~~. The court may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

G. Any district court of the State of Oklahoma and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Department of Mental Health and Substance Abuse Services;

2. Attend domestic abuse counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and

3. Attend, finish and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Department of Mental Health and Substance Abuse Services.

H. 1. If the court orders the defendant to undergo treatment or participate in the counseling necessary to bring about cessation of domestic abuse against the victim, as part of a sentence for violation of a protective order, the court shall immediately schedule a review hearing within one hundred twenty (120) days after the defendant is ordered to participate in counseling or undergo treatment in order to assure the attendance and compliance of the defendant with the court order and the domestic abuse counseling or

treatment requirements. There shall, generally, be no requirement for the victim to attend review hearings.

2. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

3. At the first review hearing, if the defendant is not in compliance with the provisions of this subsection and any domestic abuse counseling or treatment requirements, the court may determine that the defendant is in violation of the protective order or the order of the court pursuant to Section 991b of this title and may proceed with sentencing under this section for a second violation of a protective order. During the first review hearing, a second review hearing shall be scheduled within two (2) months after the expected date of the completion by the defendant of the counseling or treatment.

4. If the defendant has completed counseling or treatment, a letter from the counselor or domestic abuse counseling or treatment program that the defendant has completed counseling or treatment may suffice to waive the second hearing.

5. If the defendant has not satisfactorily completed counseling or treatment by the date of the second hearing, the court may:

- a. determine that the defendant has committed a second or third violation of the protective order or order of the court and may proceed with sentencing under this section for violation of a protective order, or
- b. order the defendant to further counseling or treatment per the recommendations of the treatment program or both.

I. At no time under any proceeding may a person protected by a protective order be held to be in violation of his or her own protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

SECTION 9. AMENDATORY 10 O.S. 2001, Section 1505, as amended by Section 1 of Enrolled Senate Bill No. 742 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1505. A. 1. The presiding or associate district judge or other judge with juvenile or deprived child docket responsibilities ~~may~~, with the approval of the county commissioners, ~~appoint a court appointed special advocate (CASA) as juvenile officer~~ may designate a juvenile officer or an assistant juvenile officer as a staff position for an existing court-appointed special advocate program.

~~1.~~ 2. In counties having a population in excess of twenty-four thousand (24,000), one juvenile officer may be employed in the respective county ~~to handle juvenile deprived cases and other related matters;~~.

~~2.~~ 3. In counties having a population in excess of forty thousand (40,000), a juvenile officer and assistant juvenile officer may be employed in the respective county ~~to handle juvenile deprived cases and other related matters.~~

B. 1. a. A ~~CASA~~ court-appointed special advocate program, ~~as defined in paragraph 11 of subsection A of Section 7001-1.3 of this title,~~ may employ and manage the juvenile officer and/or the assistant juvenile officer. ~~A court-appointed special advocate may serve as the juvenile officer and a volunteer coordinator employed by a CASA program may be named the assistant juvenile officer.~~

b. ~~When~~ If a staff position within a CASA court-appointed special advocate program, ~~as defined in paragraph 11 of subsection A of Section 7001-1.3 of this title,~~ is ~~appointed~~ designated by a court as the juvenile officer, the ~~CASA~~ court-appointed special advocate

program shall maintain an independent board of directors and shall function pursuant to the provisions of ~~the Oklahoma Children's Code or the Oklahoma Juvenile Code~~ this section.

2. The county commissioners may approve county funding to a ~~(CASA)~~ court-appointed special advocate program as salaries of the juvenile officer and/or assistant juvenile officer.

3. a. The salary of the juvenile officer shall be not less than sixty percent (60%) nor more than ninety percent (90%) of Class A officers of the county. The salary of the assistant juvenile officer shall be not less than sixty percent (60%) nor more than eighty percent (80%) of Class A officers of the county. Such salaries shall be paid from county funds.

~~Except as provided in paragraph 5 of this subsection, the~~

b. The juvenile officer and assistant juvenile officer shall be entitled to reimbursement for all traveling expenses incurred in the performance of official duties. Such expenses shall be paid upon sworn itemized claims. When transportation involves the use of the private automobile of the juvenile officer or assistant juvenile officer, such officer shall be entitled to claim reimbursement for use thereof at the rate provided for state employees under the State Travel Reimbursement Act. Such reimbursement shall be from county funds.

4. The county may allow the ~~CASA~~ court-appointed special advocate program employees to participate in all county employee benefit programs including, but not limited to, health care plans. ~~The CASA program shall, upon the county's request, reimburse the county for the cost of the CASA's participation in such programs.~~

5. The county may provide adequate office space for the ~~CASA~~ court-appointed special advocate program. ~~All other expenses of the CASA including, but not limited to, travel reimbursement shall be the responsibility of the CASA program.~~

6. The ~~court-appointed special advocate~~ juvenile officer and assistant juvenile officer shall serve at the pleasure of the court.

C. The county may fund or supplement the salaries of one or more court-appointed special advocate program employees. The county may allow court-appointed special advocate program employees to participate in county employee benefit programs including but not limited to as health care plans. The county may provide office space for the court-appointed special advocate program and other support as deemed appropriate.

D. The provisions of this ~~act~~ section shall apply to juvenile officers employed subsequent to the effective date of this act.

~~D.~~ E. The provisions of this act shall not be applicable in counties which maintain a Juvenile Bureau under the provisions of Sections 1201 through 1210 of this title.

F. For purposes of this section, a court-appointed special advocate program means a program as defined by Section 7001-1.3 of this title.

SECTION 10. 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.

49-1-6950

KSM

05/13/03