

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1621

By: Graves

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 7106, which relates to investigation of child abuse and neglect; creating new expunction procedure relating to investigation or assessment in cases of child abuse; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7106, is amended to read as follows:

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

2. The Department, when feasible, shall designate certain staff in each county office to only handle reports requiring an investigation and shall designate other staff to conduct assessments in response to reports which do not require an investigation. In county offices of the Department where an Integrated Family Services Program exists, the Department shall utilize such program staff to

assist in linking families who have agreed to accept such services with prevention and intervention-related services, and to assist in the development of such services within the community.

~~3. If an investigation or assessment conducted by the Department of Human Services in response to any report of child abuse or neglect shows that the incident reported was the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, the investigation or assessment will proceed no further. If such incident was the result of the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, all records regarding the incident shall be expunged.~~

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

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

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

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

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

5. The adequacy of the home environment;

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

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

8. All other pertinent data.

C. 1. The investigation or assessment shall include a visit to the child's home, unless there is reason to believe that there is an

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

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

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

4. a. If the court determines that the parent or person responsible for the child's health, safety or welfare is indigent, the court shall appoint an attorney to represent the parent or person responsible for the child's health, safety or welfare at the hearing to obtain mental health records.
- b. A parent or person responsible for the child's health, safety or welfare is entitled to notice and a hearing when the county office or the Department seeks a court order to allow a medical, psychological or psychiatric examination or access to mental health records.
- c. Access to mental health records does not constitute a waiver of confidentiality.

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

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

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

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

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

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

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

worker that the child needs to be protected, the Department may initiate an investigation.

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7106.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to Section 7106 of Title 10 of the Oklahoma Statutes, if an investigation or assessment conducted by the Department of Human Services in response to any report of child abuse or neglect shows that the incident reported was the result of a false accusation or the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, the investigation or assessment shall proceed no further. If the incident was the result of a false accusation or the reasonable exercise of parental discipline involving the use of ordinary force, including, but not limited to, spanking, switching or paddling, all records regarding the incident shall be expunged.

B. 1. Except as otherwise provided by this subsection, the Department shall not maintain a record of services not needed determination for longer than five (5) years after the entry of the record to the Central Registry for Child Abuse, Sexual Abuse and Neglect, if there has been no further report concerning the same individual within that five-year period; and

2. The Department shall not maintain a record of services not needed determination for longer than eight (8) years after the entry of the record to the Central Registry for Child Abuse, Sexual Abuse and Neglect if:

- a. the record of services not needed determination involves a child under the age of six (6), and
- b. there has been no further report within that eight-year period concerning the same individual.

C. The Commission for Human Services shall promulgate the necessary rules to implement this section.

SECTION 3. This act shall become effective November 1, 2003.

49-1-6452 SCE 02/20/03