

EHB 2840

THE STATE SENATE
Thursday, March 30, 2006

ENGROSSED

House Bill No. 2840

As Amended

ENGROSSED HOUSE BILL NO. 2840 - By: STEELE, WINCHESTER, HIETT,
JACKSON, KERN, PETERSON (Pam), WESSELHOFT, SULLIVAN, COODY, COX,
GILBERT, MILLER (Ken), BALKMAN, BLACKWELL, CALVEY, DANK, DENNEY,
DePUE, DUNCAN, MORGAN (Fred), NANCE, TERRILL, THOMPSON and MORGAN
(Danny) of the House and COATES of the Senate.

[children - Kelsey Smith-Briggs Child Protection Reform Act
- codification - noncodification - effective date]

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

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

Sections 1 through 16 of this act shall be known and may be
cited as the "Kelsey Smith-Briggs Child Protection Reform Act".

SECTION 2. AMENDATORY 10 O.S. 2001, Section 601.6, is
amended to read as follows:

Section 601.6 A. The Office of Juvenile System Oversight shall
have the responsibility of investigating and reporting misfeasance
and malfeasance within the children and youth service system,
inquiring into areas of concern, investigating complaints filed with
the Office of Juvenile System Oversight, and monitoring the children
and youth service system to ascertain compliance with established
responsibilities.

1 It shall be the duty of the Office of Juvenile System Oversight
2 to conduct regular, periodic, but not less than semiannual,
3 unannounced inspections of state-operated children's institutions
4 and facilities and to review the reports of the inspections of the
5 State Fire Marshal and the Department of Health and any agencies
6 which accredit such institutions and facilities.

7 B. The Office of Juvenile System Oversight shall:

8 1. Have the authority to examine all records and budgets
9 pertaining to the children and youth service system and shall have
10 access to all facilities within the children and youth service
11 system for the purpose of conducting site visits and speaking with
12 the residents of such facilities;

13 2. Have the authority to subpoena witnesses and hold public
14 hearings;

15 3. Establish, in accordance with the Dispute Resolution Act,
16 Sections 1801 through 1813 of Title 12 of the Oklahoma Statutes, a
17 program for foster parents which shall mediate complaints concerning
18 the rights of foster parents, as provided for in Section 7206.1 of
19 this title, that relate to certain actions, inactions or decisions
20 of the Department of Human Services, the Department of Juvenile
21 Justice, or child-placing agencies that may adversely affect the
22 safety and well-being of children in the custody of the state.

1 4. Issue reports to the Governor, Speaker of the House of
2 Representatives, President Pro Tempore of the Senate, Chief Justice
3 of the Supreme Court of the State of Oklahoma, any appropriate
4 prosecutorial agency, the director of the agency under
5 consideration; and such other persons as necessary and appropriate;
6 and

7 ~~4.~~ 5. Provide recommendations to the Oklahoma Commission on
8 Children and Youth on or before May 1 of each year.

9 C. The Office of Juvenile System Oversight shall not release
10 information that would identify a person who makes a complaint to
11 such Office, unless a court of competent jurisdiction orders release
12 of the information for good cause shown.

13 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7003-3.7, is
14 amended to read as follows:

15 Section 7003-3.7

16 A. 1. a. If the parents, legal guardian or custodian of the
17 child requests an attorney and is found to be without
18 sufficient financial means, counsel shall be appointed
19 by the court if a petition has been filed alleging
20 that the child is a deprived child or if termination
21 of parental rights is a possible remedy; provided that
22 the court may appoint counsel without such request, if
23 it deems representation by counsel necessary to

1 protect the interest of the parents, legal guardian or
2 custodian.

3 b. The court shall not be required to appoint an attorney
4 for any person other than for the parents, legal
5 guardian or custodian of the child pursuant to the
6 provisions of this paragraph.

7 2. a. Whenever a petition is filed pursuant to the
8 provisions of this part, the court shall appoint a
9 separate attorney, who shall not be a district
10 attorney, regardless of any attempted waiver by the
11 parent, legal guardian or custodian of the child of
12 the right of the child to be represented by counsel.
13 The parent, legal guardian or custodian shall not
14 select the child's attorney. If financially capable,
15 the parent, legal guardian or custodian shall
16 reimburse the Court Fund for the services of a court-
17 appointed attorney for the child.

18 b. The attorney appointed for the child shall make
19 arrangements to meet with the child as soon as
20 possible after receiving notification of the
21 appointment. Except for good cause shown, the
22 attorney shall meet with the child not less than
23 twenty-four (24) hours prior to any hearing in such

1 proceeding. The attorney may speak with the child
2 over the telephone if a personal visit is not possible
3 due to exigent circumstances. If a meaningful
4 attorney-client relationship between the child and the
5 attorney is prohibited due to age or disability of the
6 child, the attorney shall contact the custodian or
7 caretaker of the child prior to the hearing.

8 c. The attorney shall be given access to all reports,
9 records and other information relevant to the case and
10 to any reports of examination of the child's parents,
11 legal guardian or custodian made pursuant to this
12 section. The attorney shall represent the child and
13 any expressed interests of the child. If the
14 expressed interests of the child are not consistent
15 with the determination of the attorney as to the best
16 interests of the child, the attorney shall communicate
17 to the court his or her determination of the best
18 interests of the child as well as the expressed
19 interests of the child. The attorney shall make such
20 further inquiry as the attorney deems necessary to
21 ascertain the facts, to interview witnesses, examine
22 and cross-examine witnesses, make recommendations to
23 the court and participate further in the proceedings

1 to the degree appropriate for adequately representing
2 the interests of the child.

3 3. The attorney shall be allowed a reasonable fee for such
4 services as determined by the court, as authorized by law.

5 B. 1. Whenever a petition is filed alleging that a child is a
6 deprived child, the court may appoint a guardian ad litem for the
7 child at any time subsequent to the filing of the petition or for
8 any other action related to the child.

9 2. The court shall appoint a guardian ad litem upon the request
10 of the child, the attorney of the child, the Department of Human
11 Services, a licensed child-placing agency, or any other party to the
12 action.

13 3. A guardian ad litem shall not be a district attorney, an
14 employee of the office of the district attorney, the child's
15 attorney, an employee of the court, an employee of a juvenile
16 bureau, or an employee of any public agency having duties or
17 responsibilities towards the child.

18 4. The guardian ad litem shall be appointed to objectively
19 advocate on behalf of the child and act as an officer of the court
20 to investigate all matters concerning the best interests of the
21 child. In addition to other duties required by the court and as
22 specified by the court, a guardian ad litem shall have the following
23 responsibilities:

- 1 a. review documents, reports, records and other
2 information relevant to the case, meet with and
3 observe the child in appropriate settings, and
4 interview parents, foster parents, health care
5 providers, child protective services workers and any
6 other person with knowledge relevant to the case,
7 b. advocate for the child's best interests by
8 participating in the case, attending any hearings in
9 the matter and advocating for appropriate services for
10 the child when necessary,
11 c. maintain the confidentiality of information related to
12 a case as required by Article 7 of the Oklahoma
13 Children's Code,
14 d. monitor the child's best interests throughout any
15 judicial proceeding, and
16 e. present written reports on the child's best interests
17 that include conclusions and recommendations and the
18 facts upon which they are based.

19 5. The guardian ad litem shall be given access to the court
20 files and agency files and access to all documents, reports, records
21 and other information relevant to the case and to any records and
22 reports of examination of the child's parent or other custodian,

1 made pursuant to the laws relating to child abuse and neglect
2 including reports generated by service providers.

3 C. 1. Whenever a court-appointed special advocate program is
4 available to the court to serve as a guardian ad litem, priority
5 shall be given to appointment of the court-appointed special
6 advocate to serve as guardian ad litem for the child regardless of
7 whether a guardian ad litem has been requested pursuant to the
8 provisions of this subsection.

9 2. A Court-Appointed Special Advocate Program shall be made
10 available to each judicial district.

11 3. For purposes of the Oklahoma Children's Code, the terms
12 "court-appointed special advocate" and "guardian ad litem" shall
13 have the same function. In like manner, a court-appointed special
14 advocate, except as specifically otherwise provided by law or by the
15 court, shall have the same power, duties and responsibilities as
16 assigned to a guardian ad litem by law and shall have such other
17 qualifications, duties and responsibilities as may be prescribed by
18 rule by the Supreme Court.

19 4. A court-appointed special advocate shall serve without
20 compensation.

21 5. No court-appointed special advocate shall be assigned a case
22 before:

- 1 a. completing a training program in compliance with
2 nationally documented Court-Appointed Special Advocate
3 standards. Documentation of training shall be
4 submitted annually by local Court-Appointed Special
5 Advocate Programs to the Oklahoma Court-Appointed
6 Special Advocate Association, and
7 b. being approved by the local Court-Appointed Special
8 Advocate Program, which will include appropriate
9 criminal background checks.

10 D. 1. Any person participating in a judicial proceeding as a
11 court-appointed special advocate shall be presumed prima facie to be
12 acting in good faith and in so doing shall be immune from any civil
13 liability that otherwise might be incurred or imposed.

14 2. Any person serving in a management position of a court-
15 appointed special advocate organization, including a member of the
16 Board of Directors acting in good faith, shall be immune from any
17 civil liability or any vicarious liability for the negligence of any
18 court-appointed special advocate organization advocates, managers,
19 or directors.

20 E. The provisions of this section shall not apply to adoption
21 proceedings and actions to terminate parental rights which do not
22 involve a petition for deprived status of the child. Such

1 proceedings and actions shall be governed by the Oklahoma Adoption
2 Code.

3 SECTION 4. AMENDATORY 10 O.S. 2001, Section 7003-4.1, is
4 amended to read as follows:

5 Section 7003-4.1 A. All cases of deprived children shall be
6 heard separately from the trial of cases against adults. The
7 adjudicative hearings and hearings for termination of parental
8 rights shall be conducted according to the rules of evidence.

- 9 1. a. Except as otherwise provided by this paragraph, all
10 deprived proceedings shall be private unless
11 specifically ordered by the judge to be conducted in
12 public, but persons having a direct interest in the
13 case shall be admitted.
- 14 b. To the extent that deprived proceedings involve
15 discussion of confidential information from any child
16 abuse or neglect report and record, or any information
17 obtained from the Department of Human Services
18 concerning a child or family who is receiving Title
19 IV-B child welfare services, Title IV-E foster care or
20 adoption assistance, the confidentiality requirements
21 of those programs apply. Accordingly, such
22 information shall not be discussed in open court. To
23 the extent that confidential information is relevant

1 to the proceedings, it must be discussed in the
2 court's chambers or some other restricted setting, and
3 the pertinent sections of the transcript shall be kept
4 confidential.

5 2. Stenographic notes or other transcript of the hearings shall
6 be kept as in other cases, but they shall not be open to inspection
7 except by order of the court or as otherwise provided by law.

8 3. Uniform orders shall be used by the court in all deprived
9 proceedings. The forms shall be prescribed and published by the
10 Administrative Office of the Courts. The Supreme Court Juvenile
11 Justice Oversight and Advisory Committee, the District Attorneys
12 Council, and the Department of Human Services shall assist in the
13 development of the orders. In addition to the findings and
14 determinations required to be made by the court pursuant to the
15 Oklahoma Children's Code, the forms shall include a section which
16 will require the court to memorialize the recommendations of the
17 parties and participants made at the hearing as it relates to
18 custody or placement of the child or children.

19 B. A child who is determined to be competent to testify shall
20 not refuse to be a witness in a hearing to determine whether or not
21 the child is deprived, unless the privilege against self-
22 incrimination is invoked. The testimony of the child may be given

1 as provided by this part or as otherwise authorized by law for the
2 protection of child witnesses.

3 C. A decision determining a child to be deprived must be based
4 on sworn testimony and the child must have the opportunity for
5 cross-examination unless the facts are stipulated.

6 SECTION 5. AMENDATORY 10 O.S. 2001, Section 7003-6.2, is
7 amended to read as follows:

8 Section 7003-6.2 A. Any interested party aggrieved by any
9 order or decree may appeal to the Supreme Court pursuant to Section
10 7003-6.4 of this title and the rules of the Supreme Court of this
11 state.

12 B. The pendency of an appeal thus taken shall not suspend the
13 order of the district court regarding a child, nor shall it remove
14 the child from the custody of that court or of the person,
15 institution or agency to whose care such child has been committed,
16 unless the Supreme Court shall so order, except as provided in
17 subsection C of this section. The pendency of an appeal from an
18 order of adjudication shall not prevent the district court from
19 holding a dispositional hearing unless the appellate court shall so
20 order.

21 C. 1. At any hearing, including, but not limited to, hearings
22 conducted pursuant to Section 7003-8.6 of this title, where it is
23 determined that a child in state custody will be released from state

1 custody, the district attorney or the attorney for the child may,
2 within forty-eight (48) hours of the hearing, give verbal or written
3 notice to the court of an objection to the order of the court and an
4 intention to seek review of that order based on the grounds that the
5 order of the court releasing the child from state custody is
6 contrary to the health, safety and welfare of the child.

7 2. ~~Upon giving such notice, the~~ At any hearing including, but
8 not limited to, hearings conducted pursuant to Section 7003-8.6 of
9 this title, where it is determined that a child in state custody
10 will be released from state custody, the district attorney upon a
11 request made by the Director of the Department of Human Services or
12 designee shall, within forty-eight (48) hours of the hearing, give
13 verbal or written notice to the court of an objection to the order
14 of the court and an intention to seek review of that order based on
15 the grounds that the order of the court releasing the child from
16 state custody is contrary to the health, safety, and welfare of the
17 child.

18 3. The court issuing the custody order in question shall stay
19 the custody order for not less than forty-eight (48) hours pending
20 the verbal or written notice of objection. Upon giving such notice,
21 the court shall continue to stay the custody order pending the
22 filing of an application and completion of review as provided in
23 this section. The district attorney or attorney for the child shall

1 file with the presiding judge of the administrative judicial
2 district a written application for review within three (3) judicial
3 days from the ~~custody order~~ verbal or written notice of objection to
4 the court. If an application is not filed within such time period,
5 or if a written notice to the trial court withdrawing the objection
6 is filed within that time period, the objection will be deemed
7 abandoned and the stay shall be lifted.

8 ~~3.~~ 4. Each application for review shall be assigned by the
9 presiding judge of the administrative judicial district to a judge
10 within that administrative judicial district with juvenile docket
11 responsibilities. The review shall be completed within five (5)
12 judicial days of the filing of the written application for review.
13 The review conducted by the reviewing judge shall address the
14 question of whether releasing the child from state custody is
15 contrary to the health, safety and welfare of the child. The
16 reviewing court shall review the record of the hearing and any other
17 evidence deemed relevant by the reviewing court. At the conclusion
18 of the review, the reviewing court shall issue its findings of fact
19 and conclusions of law and report them to the court issuing the
20 original custody order.

21 ~~4.~~ 5. A finding by the reviewing court that the original order
22 regarding releasing the child from state custody is contrary to the
23 health, safety and welfare of the child shall be controlling and the

1 court issuing the original order shall proceed to enter a different
2 custody order. If the reviewing court finds that the original
3 order is not contrary to the health, safety and welfare of the child
4 and that the original order is otherwise appropriate then the court
5 issuing the original order shall lift the stay and the original
6 order shall be subject to appeal as provided in subsection A of this
7 section. The failure of any court to issue the stay mandated by
8 this subsection shall be subject to immediate mandamus to an
9 appropriate court.

10 SECTION 6. AMENDATORY 10 O.S. 2001, Section 7003-6.2A,
11 is amended to read as follows:

12 Section 7003-6.2A A. At any hearing pursuant to the provisions
13 of the Oklahoma Children's Code for the purpose of determining the
14 placement of a child or that a child in state custody is to be
15 released from state custody, the court shall provide an opportunity
16 to a representative of the Department of Human Services, the present
17 foster parent, the guardian ad litem and the child, if of sufficient
18 age as determined by the court, to present sworn testimony regarding
19 the placement of the child or release of the child from state
20 custody. A representative of the Oklahoma Commission on Children
21 and Youth shall also be provided an opportunity to present sworn
22 testimony regarding the placement of a child or release of a child
23 from state custody where, as a result of an investigation conducted

1 by the Office of Juvenile System Oversight, it is believed that
2 there is a serious risk of danger to the health or safety of a
3 child.

4 B. The court, the district attorney or the attorneys for the
5 parties may cross examine the representative of the Department of
6 Human Services, the child, if of sufficient age as determined by the
7 court, the representative of the Oklahoma Commission on Children and
8 Youth, the present foster parents, and the guardian ad litem.

9 C. The court shall issue written findings of fact and
10 conclusions of law. All hearings concerning such cases shall be on
11 the record. The failure of any court to provide an opportunity to a
12 representative of the Department of Human Services, a representative
13 of the Oklahoma Commission on Children and Youth, or to the present
14 foster parent, the guardian ad litem and to the child, if of
15 sufficient age as determined by the court, to present the sworn
16 testimony pursuant to this section shall be subject to immediate
17 mandamus to an appropriate court.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 7004-1.8 of Title 10, unless
20 there is created a duplication in numbering, reads as follows:

21 On or before January 1, 2007, the Department of Human Services
22 shall establish a performance-based incentive compensation program
23 for employees exclusively working as child welfare specialists. All

1 full-time child welfare specialists shall be eligible to participate
2 in the performance-based incentive compensation program.
3 Eligibility factors shall include, but not be limited to, child
4 welfare specialists who have met or exceeded the suggested federal
5 child welfare outcomes, received above-average employee evaluations,
6 as defined by the Office of Personnel Management, **completed**
7 **Department-sponsored field training** and obtained an advanced higher
8 education degree in social work or closely related field. The
9 eligibility of a child welfare specialist shall not be based upon
10 the level of seniority that has been obtained by the child welfare
11 specialist. The Oklahoma Commission for Human Services shall
12 promulgate rules as necessary to implement the provisions of this
13 section.

14 SECTION 8. AMENDATORY 10 O.S. 2001, Section 7005-1.4, is
15 amended to read as follows:

16 Section 7005-1.4 A. Department of Human Services agency
17 records pertaining to a child may be inspected and their contents
18 disclosed without a court order to the following persons upon
19 showing of proper credentials and pursuant to their lawful duties:

20 1. The court having the child currently before it in any
21 proceeding pursuant to this title, any district court or tribal
22 court to which such proceedings may be transferred, employees and
23 officers of the court in the performance of their duties, including

1 but not limited to guardians ad litem appointed by the court,
2 postadjudicatory review boards, court-appointed special advocates,
3 and members of the Child Death Review Board;

4 2. Any district court which has ordered a home study by the
5 Department in an action for divorce, annulment, custody of a child,
6 or appointment of a legal guardian of a child, or any subsequent
7 proceeding in such actions; provided, however, the Department may
8 limit disclosure in the home study to summaries or to information
9 directly related to the purpose of such disclosure;

10 3. A district attorney, United States Attorney or Attorney
11 General of this or another state and the employees of such offices
12 in the course of their official duties pursuant to this title or the
13 prosecution of crimes against children or upon their request in
14 their official capacity as advisor in a grand jury proceeding;

15 4. The attorney representing a child who is the subject of a
16 proceeding pursuant to the provisions of this title including the
17 attorney representing a child pursuant to the provisions of
18 subsection C of Section 7002-1.2 of this title or representing a
19 child pursuant to the laws relating to child abuse and neglect.
20 Such attorney may also access other records listed in subsection A
21 of Section 7005-1.2 of this title for use in the legal
22 representation of the child;

1 5. Employees of juvenile bureaus in the course of their
2 official duties;

3 6. Employees of a law enforcement agency of this or another
4 state and employees of a child protective service agency of another
5 state or federally recognized Indian tribe in the course of their
6 official duties pertaining to investigations of a report of known or
7 suspected child abuse or neglect or crimes against children or for
8 the purpose of determining whether to place a child in protective
9 custody;

10 7. The Oklahoma Commission on Children and Youth as provided by
11 Sections 601.2 and 601.6 of this title;

12 8. The Office of Juvenile Affairs;

13 9. Persons and agencies authorized by Section 7005-1.7 of this
14 title;

15 10. Members of multidisciplinary teams or multidisciplinary
16 personnel designated by the Department of Human Services,
17 investigating a report of known or suspected child abuse or neglect
18 or providing services to a child or family which is the subject of
19 the report;

20 11. A physician who has before him or her a child whom the
21 physician reasonably suspects may be abused or neglected or any
22 health care or mental health professionals involved in the

1 evaluation or treatment of the child, the child's parents, legal
2 guardian, foster parent, custodian or other family members;

3 12. Any public or private agency or person authorized by the
4 Department to diagnose, or provide care, treatment, supervision or
5 other services to a child who is the subject of a report or record
6 of child abuse or neglect, provided the Department may limit such
7 disclosure to summaries or to information directly necessary for the
8 purpose of such disclosure;

9 13. Any federally recognized Indian tribe or state or county
10 child protective services or child welfare agency providing for or
11 supervising the diagnosis, care, treatment, supervision or other
12 services provided such child;

13 14. A parent, legal guardian or custodian of the child who is
14 the subject of such records; provided, that records disclosed shall
15 be limited to juvenile court records as defined by Section 7005-1.1
16 of this title. All other agency records pertaining to or related to
17 any alleged or adjudicated abuse or neglect of the child shall not
18 be inspected or disclosed pursuant to this paragraph;

19 15. Any person or agency for research purposes, if all of the
20 following conditions are met:

21 a. the person or agency conducting such research is
22 employed by the State of Oklahoma or is under contract

1 with this state and is authorized by the Department of
2 Human Services to conduct such research, and
3 b. the person or agency conducting the research ensures
4 that all documents containing identifying information
5 are maintained in secure locations and access to such
6 documents by unauthorized persons is prohibited; that
7 no identifying information is included in documents
8 generated from the research conducted; and that all
9 identifying information is deleted from documents used
10 in the research when the research is completed;

11 16. Persons authorized by and in the manner provided in the
12 Oklahoma Child Abuse Prevention and Reporting Act;

13 17. A foster parent, with regard to records concerning the
14 social, medical, psychological or educational needs of a child
15 currently placed with that foster parent or of a child being
16 considered for placement with that foster parent;

17 18. The Governor or to any person the Governor designates, in
18 writing;

19 19. Any federal official of the United States Department of
20 Health and Human Services;

21 20. The Oklahoma Health Care Authority;

1 21. Any member of the Legislature approved in writing by the
2 Speaker of the House of Representatives or the President Pro Tempore
3 of the Senate;

4 22. Any person or agency authorized to receive any paper,
5 record, book or other information pursuant to the Oklahoma Adoption
6 Code pertaining to a child who is the subject of an adoption
7 proceeding or relatives who are related to such child within the
8 third degree of consanguinity;

9 23. Employees of any state or federal corrections or law
10 enforcement agency in the performance of their official duties
11 concerning presentence investigations or supervision of a parent of
12 an alleged or adjudicated deprived child or the legal guardian,
13 custodian or any other adult member of the child's home who is
14 responsible for the care of the child; and

15 24. An employee of a state agency of this or another state in
16 the performance of such employee's official duties concerning the
17 establishment of paternity or the establishment or enforcement of a
18 child support order or other entitlement for the benefit of a child;
19 provided, the Department shall limit disclosure to information
20 directly related to the purpose of such disclosure.

21 B. In accordance with the rules promulgated for such purpose
22 pursuant to the provisions of Section 620.6 of this title, records

1 may be inspected and their contents disclosed without a court order
2 to participating agencies.

3 C. Nothing in this section shall be construed as prohibiting
4 the Department from disclosing such confidential information as may
5 be necessary to secure appropriate care, treatment, protection or
6 supervision of a child alleged to be abused or neglected.

7 D. Records and their contents disclosed pursuant to this
8 section shall remain confidential. The use of such information
9 shall be limited to the purposes for which disclosure is authorized.
10 It shall be unlawful and a misdemeanor for any person to furnish any
11 record or disclose any information contained therein for any
12 unauthorized purpose.

13 E. 1. In cases involving the death or near death of a child
14 when a person responsible for the child has been charged by
15 information or indictment with committing a crime resulting in the
16 child's death or near death, there shall be a presumption that the
17 best interest of the public will be served by public disclosure of
18 certain information concerning the circumstances of the
19 investigation of the death or near death of the child and any other
20 investigations concerning that child, or other children living in
21 the same household.

22 2. At any time subsequent to seven (7) days of the date the
23 person responsible for the child has been criminally charged, the

1 Department of Human Services, the Oklahoma Commission on Children
2 and Youth, or the district attorney may release the following
3 information to the public:

- 4 a. a confirmation that a report has been made concerning
5 the alleged victim or other children living in the
6 same household and whether an investigation has begun,
7 b. confirmation as to whether previous reports have been
8 made and the dates thereof, a summary of those
9 previous reports, the dates and outcome of any
10 investigations or actions taken by the Department of
11 Human Services in response to any report of child
12 abuse or neglect, the specific recommendation made to
13 the district attorney by the Department of Human
14 Services, and any actions taken by the district
15 attorney after submission of any investigative report,
16 and
17 c. the dates of any judicial proceedings prior to the
18 child's death or near death, specific recommendations
19 made by the Department of Human Services in any
20 progress reports submitted to the court, a summary of
21 each participant's recommendations made at the
22 judicial proceedings including recommendations made at

1 the hearing as they relate to custody or placement of
2 a child, and the rulings of the court.

3 3. Any disclosure of information pursuant to this section shall
4 not identify or provide an identifying description of any
5 complainant or reporter of child abuse or neglect, and shall not
6 identify the name of the child victim's siblings or other children
7 living in the same household, the parent or other person responsible
8 for the child or any other member of the household, other than the
9 person criminally charged.

10 F. For purposes of this section, the term "near death" means
11 the child is in serious or critical condition, as certified by a
12 physician, as a result of abuse or neglect.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 7008-1.1 of Title 10, unless
15 there is created a duplication in numbering, reads as follows:

16 A. The Legislature hereby establishes the Oklahoma Children and
17 Juvenile Law Reform Committee and directs the Committee to undertake
18 a full, good-faith and thorough study and recommended revision and
19 recodification of the laws and procedures concerning children and
20 juveniles in Title 10 of the Oklahoma Statutes.

21 B. All departments, officers, agencies and employees of this
22 state shall cooperate with the Oklahoma Children and Juvenile Law
23 Reform Committee in carrying out its duties and responsibilities,

1 including providing any information, records and reports as may be
2 requested by the cochairs of the Committee.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 7008-1.2 of Title 10, unless
5 there is created a duplication in numbering, reads as follows:

6 A. The Committee shall consist of eighteen (18) members
7 appointed as follows:

8 1. One member shall be a presiding judge of a court having
9 juvenile law jurisdiction, to be appointed by the President of the
10 State Judicial Conference;

11 2. One member shall be a professor of law from Oklahoma City
12 University School of Law, to be appointed by the Dean of the School
13 of Law;

14 3. One member shall be a professor of law from the University
15 of Tulsa College of Law, to be appointed by the Dean of the College
16 of Law;

17 4. One member shall be a professor of law from the University
18 of Oklahoma, to be appointed by the Dean of the College of Law;

19 5. Three members who are employees of the Department of Human
20 Services shall be appointed by the Director of the Department of
21 Human Services, one of which shall be an attorney;

1 6. Two members who are employees of the Office of Juvenile
2 Affairs shall be appointed by the Executive Director of the Office
3 of Juvenile Affairs, one of which shall be an attorney;

4 7. One member shall be appointed by the Director of the
5 Oklahoma Commission on Children and Youth;

6 8. Three members shall be appointed by the Speaker of the House
7 of Representatives;

8 9. Three members shall be appointed by the President Pro
9 Tempore of the Senate;

10 10. One member shall be a judge or a justice of the Supreme
11 Court of the State of Oklahoma, to be appointed by the justices of
12 the Supreme Court of the State of Oklahoma; and

13 11. One member shall be an attorney practicing in the area of
14 child or juvenile law and who is an active member of the Family Law
15 Section of the Oklahoma Bar Association, to be appointed by the
16 President of the Oklahoma Bar Association.

17 B. Each member of the Oklahoma Children and Juvenile Law Reform
18 Committee initially appointed shall make the appointment known to
19 the Speaker of the House of Representatives and the President Pro
20 Tempore of the Senate by August 1, 2006. Appointed members shall
21 serve until June 30, 2008.

22 C. The Oklahoma Children and Juvenile Law Reform Committee may
23 divide into subcommittees in furtherance of its purposes.

1 D. Any vacancies in the appointive membership of the Oklahoma
2 Children and Juvenile Law Reform Committee shall be filled for the
3 unexpired term in the same manner as the original appointment.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 7008-1.3 of Title 10, unless
6 there is created a duplication in numbering, reads as follows:

7 A. The purposes of the Oklahoma Children and Juvenile Law
8 Reform Committee shall be to conduct a systematic review and study
9 of all laws and procedures in Title 10 of the Oklahoma Statutes and
10 prepare a recommended draft to reclassify, update, reform and
11 recodify the statutes. The duties of the Committee in preparing
12 recommendations shall be as follows:

- 13 1. To consolidate similar statutes;
- 14 2. To renumber children and juvenile law statutes;
- 15 3. To repeal obsolete or duplicate statutes or any statutes
16 which have been declared unconstitutional by court decision;
- 17 4. To create a recommended Children's Code Article in Title 10
18 of the Oklahoma Statutes;
- 19 5. To incorporate into the Children's Code Article as many
20 existing statutes relating to children and juvenile law procedure
21 found throughout the Oklahoma Statutes as is practicable;
- 22 6. To update statutory references within each section relating
23 to children and juvenile law procedure;

1 7. To clarify and update existing statutory language;

2 8. To recodify those sections of law which relate to children
3 and juvenile law procedure when the move will improve the location,
4 use, application and appropriateness of the section; and

5 9. To perform any other act necessary to complete the purposes
6 of the Committee.

7 B. The Oklahoma Children and Juvenile Law Reform Committee
8 shall be responsible for drafting recommended legislation in
9 accordance with the current legislative drafting procedures.

10 C. 1. The Oklahoma Children and Juvenile Law Reform Committee
11 shall prepare a final draft of a recommended Children's Code
12 Article, and shall submit the recommended Article to the Speaker of
13 the House of Representatives and the President Pro Tempore of the
14 Senate by November 1, 2007.

15 2. If, after the Committee submits the recommended Article, the
16 Committee determines the Article needs additional revisions, the
17 revisions shall be submitted as one final amendment. The
18 recommended Article amendment shall be submitted to the Speaker of
19 the House of Representatives and the President Pro Tempore of the
20 Senate not later than March 1, 2008.

21 3. The Oklahoma Children and Juvenile Law Reform Committee
22 shall submit a summary of every recommended change and addition to
23 existing laws at the time the recommended Children's Code Article

1 and any amendments are presented to the Speaker of the House of
2 Representatives and the President Pro Tempore of the Senate.

3 D. The Oklahoma Children and Juvenile Law Reform Committee
4 shall cease to function June 30, 2008.

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 7008-1.4 of Title 10, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Within fifteen (15) days from the initial appointment of
9 membership for the Oklahoma Children and Juvenile Law Reform
10 Committee, the Speaker of the House of Representatives and the
11 President Pro Tempore of the Senate shall each appoint one member of
12 the Committee to serve as cochairs. If a vacancy occurs in such
13 office, a new cochair shall be appointed from the Committee in the
14 same manner as the original appointment, who shall serve until June
15 30, 2008.

16 B. Other officers may be elected to serve the Committee for
17 terms of office as may be designated by the Committee members. The
18 cochairs of the Committee or their designees shall preside at
19 meetings.

20 C. The Committee may meet at least one time per month and at
21 such other times as may be set by the cochairs of the Committee.

1 D. Members of the Committee shall receive no salary; however,
2 all members of the Committee shall be reimbursed for their actual
3 and necessary travel expenses as follows:

4 1. Legislative members of the Committee shall receive
5 reimbursement from the house in which they serve as provided in the
6 State Travel Reimbursement Act, except when the Legislature is in
7 session and the meeting is held in Oklahoma City;

8 2. Nonlegislative Committee members employed by the state shall
9 be reimbursed by their respective employing agency pursuant to the
10 State Travel Reimbursement Act; and

11 3. Any other Committee member shall receive reimbursement
12 pursuant to the State Travel Reimbursement Act.

13 E. A majority of the members appointed to the Committee shall
14 constitute a quorum and a majority present may act for the
15 Committee.

16 SECTION 13. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 7008-1.5 of Title 10, unless
18 there is created a duplication in numbering, reads as follows:

19 The Oklahoma Children and Juvenile Law Reform Committee shall
20 provide a written progress report to the President Pro Tempore of
21 the Senate and the Speaker of the House of Representatives on or
22 before March 1, 2007.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7008-1.6 of Title 10, unless
3 there is created a duplication in numbering, reads as follows:

4 The Oklahoma House of Representatives and the Oklahoma State
5 Senate may provide staff assistance to the Oklahoma Children and
6 Juvenile Law Reform Committee as necessary to assist the Committee
7 in the performance of its duties.

8 SECTION 15. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 7104.1 of Title 10, unless there
10 is created a duplication in numbering, reads as follows:

11 A judge of the district court shall have the authority to
12 request an investigation be conducted by the Oklahoma State Bureau
13 of Investigation in cases where it has been determined that
14 criminally injurious conduct including, but not limited to, physical
15 or sexual abuse of a child has occurred.

16 SECTION 16. AMENDATORY 10 O.S. 2001, Section 7106, is
17 amended to read as follows:

18 Section 7106. A. 1. Any county office of the Department of
19 Human Services receiving a child abuse or neglect report as provided
20 in Section 7103 of this title shall promptly respond to the report
21 by initiating an investigation of the report or an assessment of the
22 family in accordance with priority guidelines established by the
23 Department of Human Services. The Department may assign priorities

1 to reports of alleged child abuse or neglect based on the severity
2 and immediacy of the alleged harm to the child. The Department
3 shall adopt the priority system pursuant to rules promulgated by the
4 Commission for Human Services. The primary purpose of the
5 investigation or assessment shall be the protection of the child.

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

15 3. If an investigation or assessment conducted by the
16 Department of Human Services in response to any report of child
17 abuse or neglect shows that the incident reported was the result of
18 the reasonable exercise of parental discipline involving the use of
19 ordinary force, including, but not limited to, spanking, switching
20 or paddling, the investigation or assessment will proceed no
21 further. If such incident was the result of the reasonable exercise
22 of parental discipline involving the use of ordinary force,

1 including, but not limited to, spanking, switching or paddling, all
2 records regarding the incident shall be expunged.

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

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

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

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

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

12 5. The adequacy of the home environment;

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

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

19 8. All other pertinent data.

20 C. 1. The investigation or assessment shall include a visit to
21 the child's home, unless there is reason to believe that there is an
22 extreme safety risk to the child or worker or it appears that the
23 referral has been made in bad faith, and shall also include an

1 interview with and examination of the subject child. The interview
2 with and examination of the child may be conducted at any reasonable
3 time and at any place, including, but not limited to, the child's
4 school. It shall be the responsibility of the Department of Human
5 Services to notify the parents of a child who has been interviewed
6 at a school. The investigation or assessment may include an
7 interview with the child's parents or any other person responsible
8 for a child's health, safety or welfare and an interview with and
9 examination of any child in the home.

10 2. The investigation or assessment may include a medical,
11 psychological, or psychiatric examination of any child in that home.
12 If admission to the home, school, or any place where the child may
13 be located cannot be obtained, then the district court having
14 jurisdiction, upon application by the district attorney and upon
15 cause shown, shall order the parents or other persons responsible
16 for the health, safety or welfare of the child, or the person in
17 charge of any place where the child may be located, to allow
18 entrance for the interview, the examination and the investigation or
19 assessment. If the parents or other persons responsible for the
20 child's health, safety or welfare do not consent to a medical,
21 psychological or psychiatric examination of the child that is
22 requested by the county office or the Department, the district court
23 having jurisdiction, upon application by the district attorney and

1 upon cause shown, shall order the examination to be made at the
2 times and places designated by the court. As necessary in the
3 course of conducting an investigation, the Department may request
4 and obtain, without a court order, copies of the prior medical
5 records of a child including, but not limited to, hospital records
6 and medical and dental records. The physician-patient privilege
7 shall not constitute grounds for failure to produce such records.

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

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

1 child's health, safety or welfare at the hearing to
2 obtain mental health records.

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

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

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

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

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

21 F. If, before the investigation is complete, the opinion of the
22 child protective services worker is that immediate removal of the
23 child is necessary to protect the child from further abuse or

1 neglect, the child protective services worker shall recommend that
2 the child be taken into custody pursuant to the Oklahoma Children's
3 Code.

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

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

16 H. The Department shall identify prevention and intervention-
17 related services available in the community and arrange for such
18 services to be provided to the family when an investigation or
19 assessment indicates the family would benefit from such services, or
20 the Department may provide such services directly. The Department
21 shall thoroughly document in the record its attempts to provide, or
22 arrange for the provision of, voluntary services and the reasons
23 these services are important to reduce the risk of future abuse or

1 neglect to the child. If the family continues to refuse voluntary
2 services, and it is determined by the child protective services
3 worker that the child needs to be protected, the Department may
4 initiate an investigation.

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

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

20 K. The Director of the Department of Human Services or designee
21 shall have the authority to request an investigation be conducted by
22 the Oklahoma State Bureau of Investigation in cases where it has

1 been determined that criminally injurious conduct including, but not
2 limited to, physical or sexual abuse of a child has occurred.

3 SECTION 17. AMENDATORY 74 O.S. 2001, Section 150.5, as
4 last amended by Section 1, Chapter 278, O.S.L. 2005 (74 O.S. Supp.
5 2005, Section 150.5), is amended to read as follows:

6 Section 150.5 A. 1. Oklahoma State Bureau of Investigation
7 investigations not covered under Section 150.2 of this title shall
8 be initiated at the request of the following persons:

- 9 a. the Governor,
- 10 b. the Attorney General,
- 11 c. the Council on Judicial Complaints upon a vote by a
12 majority of the Council, ~~or~~
- 13 d. the chair of any Legislative Investigating Committee
14 which has been granted subpoena powers by resolution,
15 upon authorization by a vote of the majority of the
16 Committee,
- 17 e. the Director of the Department of Human Services, or
18 designee, as authorized by Section 7106 of Title 10 of
19 the Oklahoma Statutes, or
- 20 f. a district court judge as authorized by Section 15 of
21 this act.

1 2. Requests for investigations shall be submitted in writing
2 and shall contain specific allegations of wrongdoing under the laws
3 of the State of Oklahoma.

4 B. The Governor may initiate special background investigations
5 with the written consent of the person who is the subject of the
6 investigation.

7 C. The chair of any Senate committee which is fulfilling the
8 statutory responsibility for approving nominations made by the
9 Governor may, upon a vote by a majority of the committee and with
10 the written consent of the person who is to be the subject of the
11 investigation, initiate a special background investigation of any
12 nominee for the Oklahoma Horse Racing Commission as established by
13 Section 201 of Title 3A of the Oklahoma Statutes or any nominee for
14 the Board of Trustees of the Oklahoma Lottery Commission as
15 established by Section 704 of Title 3A of the Oklahoma Statutes.
16 The Bureau shall submit a report to the committee within thirty (30)
17 days of the receipt of the request. Any consideration by the
18 committee of a report from the Bureau shall be for the exclusive use
19 of the committee and shall be considered only in executive session.

20 D. All records relating to any investigation being conducted by
21 the Bureau, including any records of laboratory services provided to
22 law enforcement agencies pursuant to paragraph 1 of Section 150.2 of
23 this title, shall be confidential and shall not be open to the

1 public or to the Commission except as provided in Section 150.4 of
2 this title; provided, however, officers and agents of the Bureau may
3 disclose, at the discretion of the Director, such investigative
4 information to officers and agents of federal, state, county, or
5 municipal law enforcement agencies and to district attorneys, in the
6 furtherance of criminal investigations within their respective
7 jurisdictions. Officers and agents of the Bureau may also disclose,
8 at the discretion of the Director, such investigative information to
9 appropriate accreditation bodies for the purposes of the Bureau's
10 obtaining or maintaining accreditation. Any unauthorized disclosure
11 of any information contained in the confidential files of the Bureau
12 shall be a misdemeanor. The person or entity authorized to initiate
13 investigations in this section, and the Attorney General in the case
14 of investigations initiated by the Insurance Commissioner, shall
15 receive a report of the results of the requested investigation. The
16 person or entity requesting the investigation may give that
17 information only to the appropriate prosecutorial officer or agency
18 having statutory authority in the matter if that action appears
19 proper from the information contained in the report, and shall not
20 reveal or give such information to any other person or agency.
21 Violation hereof shall be deemed willful neglect of duty and shall
22 be grounds for removal from office.

1 E. It shall not be a violation of this section to reveal
2 otherwise confidential information to outside agencies or
3 individuals who are providing interpreter services, questioned
4 document analysis, and other laboratory services that are necessary
5 in the assistance of Bureau investigations. Individuals or agencies
6 receiving the confidential and investigative information or records
7 or results of laboratory services provided to the Bureau by those
8 agencies or individuals, shall be subject to the confidentiality
9 provisions and requirements established in subsection D of this
10 section.

11 F. The State Treasurer shall initiate a complete background
12 investigation of the positions with the written consent of the
13 persons who are the subject of the investigation pursuant to
14 subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes.
15 The Bureau shall advise the State Treasurer and the Cash Management
16 and Investment Oversight Commission in writing of the results of the
17 investigation.

18 SECTION 18. This act shall become effective November 1, 2006.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-28-06 - DO
20 PASS, As Amended and Coauthored.