

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2840

By: Steele and Winchester

AS INTRODUCED

An Act relating to children; creating the Kelsey Smith-Briggs Child Protection Reform Act; amending 10 O.S. 2001, Sections 7003-3.7, 7003-4.1, 7003-6.2, 7003-6.2A and 7005-1.4, which relates to Oklahoma Children's Code; requiring attorney to communicate certain information to court under certain circumstances; providing certain requirements of court-appointed special advocates; providing for use of uniform orders; directing certain entity to publish forms; directing certain entities to assist in development of orders; requiring certain information be included on form; authorizing certain person to request appeal; modifying time limitations for notice of appeal; providing for written notice; modifying appeal procedures; expanding scope of hearing requirement; authorizing representative of certain entity to provide testimony under certain circumstances; expanding scope of records disclosure requirement; establishing the Oklahoma Children and Juvenile Law Reform Committee; directing cooperation; stating Committee membership, method of appointment, term and procedure for vacancies; stating purposes and duties for Committee; establishing dates for Committee to submit recommendations; providing termination date for Committee; providing for appointment of cochairs and officers; authorizing travel reimbursement; providing for meetings, quorum and record-keeping; requiring progress reports; providing staff to assist Committee; amending 10 O.S. 2001, Section 7106, which relates to the Oklahoma Child Abuse Reporting and Prevention Act; authorizing request for investigation under certain circumstances; amending 74 O.S. 2001, Section 150.5, as last amended by Section 1, Chapter 278, O.S.L. 2005 (74 O.S. Supp. 2005, Section 150.5), which relates to persons to initiate request for investigations by Oklahoma State Bureau of Investigation; authorizing Director of Department of Human Services to request an investigation; providing for codification; providing for noncodification; and providing an 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 14 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 7003-3.7, is amended to read as follows:

Section 7003-3.7

- A. 1. a. If the parents, legal guardian or custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court if a petition has been filed alleging that the child is a deprived child or if termination of parental rights is a possible remedy; provided that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, legal guardian or custodian.
- b. The court shall not be required to appoint an attorney for any person other than for the parents, legal guardian or custodian of the child pursuant to the provisions of this paragraph.
2. a. Whenever a petition is filed pursuant to the provisions of this part, the court shall appoint a separate attorney, who shall not be a district attorney, regardless of any attempted waiver by the parent, legal guardian or custodian of the child of the right of the child to be represented by counsel. The parent, legal guardian or custodian shall not select the child's attorney. If financially capable, the parent, legal guardian or custodian shall reimburse the Court Fund for the services of a court-appointed attorney for the child.
- b. The attorney appointed for the child shall make arrangements to meet with the child as soon as

possible after receiving notification of the appointment. Except for good cause shown, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing in such proceeding. The attorney may speak with the child over the telephone if a personal visit is not possible due to exigent circumstances. If a meaningful attorney-client relationship between the child and the attorney is prohibited due to age or disability of the child, the attorney shall contact the custodian or caretaker of the child prior to the hearing.

- c. The attorney shall be given access to all reports, records and other information relevant to the case and to any reports of examination of the child's parents, legal guardian or custodian made pursuant to this section. The attorney shall represent the child and any expressed interests of the child. If the expressed interests of the child is not consistent with the determination of the attorney as to the best interests of the child, the attorney shall communicate to the court his or her determination of the best interests of the child as well as the expressed interests of the child. The attorney shall make such further inquiry as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the interests of the child.

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

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

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

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

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

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, foster parents, health care providers, child protective services workers and any other person with knowledge relevant to the case,
- b. advocate for the child's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. maintain the confidentiality of information related to a case as required by Article 7 of the Oklahoma Children's Code,

- d. monitor the child's best interests throughout any judicial proceeding, and
- e. present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

5. The guardian ad litem shall be given access to the court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to the laws relating to child abuse and neglect including reports generated by service providers.

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

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

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

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

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

- a. completing a training program in compliance with National Court Appointed Special Advocate Association and state standards, and
- b. being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

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

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

E. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

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

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

- 1. a. Except as otherwise provided by this paragraph, all deprived proceedings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted.

b. To the extent that deprived proceedings involve discussion of confidential information from any child abuse or neglect report and record, or any information obtained from the Department of Human Services concerning a child or family who is receiving Title IV-B child welfare services, Title IV-E foster care or adoption assistance, the confidentiality requirements of those programs apply. Accordingly, such information shall not be discussed in open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript shall be kept confidential.

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

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

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

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

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

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7003-6.2, is amended to read as follows:

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

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

C. 1. At any hearing, including, but not limited to, hearings conducted pursuant to Section 7003-8.6 of this title, where it is determined that a child in state custody will be released from state custody, the district attorney ~~or~~, the attorney for the child, or the district attorney upon a request made by the Director of the Department of Human Services or designee may, within forty-eight (48) hours of the hearing, give verbal or written notice to the court of an objection to the order of the court and an intention to seek review of that order based on the grounds that the order of the court releasing the child from state custody is contrary to the health, safety and welfare of the child.

2. ~~Upon giving such notice, the~~ The court issuing the custody order in question shall stay the custody order pending the verbal or written notice of objection. Upon giving such notice, the court shall continue to stay the custody order pending the filing of an application and completion of review as provided in this section. The district attorney or attorney for the child shall file with the presiding judge of the administrative judicial district a written application for review within three (3) judicial days from the ~~custody order~~ verbal or written notice of objection to the court. If an application is not filed within such time period, or if a written notice to the trial court withdrawing the objection is filed within that time period, the objection will be deemed abandoned and the stay shall be lifted.

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

4. A finding by the reviewing court that the original order regarding releasing the child from state custody is contrary to the health, safety and welfare of the child shall be controlling and the court issuing the original order shall proceed to enter a different custody order. If the reviewing court finds that the original order is not contrary to the health, safety and welfare of the child

and that the original order is otherwise appropriate then the court issuing the original order shall lift the stay and the original order shall be subject to appeal as provided in subsection A of this section. The failure of any court to issue the stay mandated by this subsection shall be subject to immediate mandamus to an appropriate court.

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

Section 7003-6.2A A. At any hearing pursuant to the provisions of the Oklahoma Children's Code for the purpose of determining the placement of a child or that a child in state custody is to be released from state custody, the court shall provide an opportunity to a representative of the Department of Human Services, the present foster parent, the guardian ad litem and the child, if of sufficient age as determined by the court, to present sworn testimony regarding the placement of the child or release of the child from state custody. A representative of the Oklahoma Commission on Children and Youth shall also be provided an opportunity to present sworn testimony regarding the placement of a child or release of a child from state custody where, as a result of an investigation conducted by the Office of Juvenile System Oversight, it is believed that there is a serious risk of danger to the health or safety of a child.

B. The court, the district attorney or the attorneys for the parties may cross examine the representative of the Department of Human Services, the child, if of sufficient age as determined by the court, the present foster parents, and the guardian ad litem.

C. The court shall issue written findings of fact and conclusions of law. All hearings concerning such cases shall be on the record. The failure of any court to provide an opportunity to a representative of the Department of Human Services or to the present foster parent, the guardian ad litem and to the child, if of

sufficient age as determined by the court, to present the sworn testimony pursuant to this section shall be subject to immediate mandamus to an appropriate court.

SECTION 6. AMENDATORY 10 O.S. 2001, Section 7005-1.4, is amended to read as follows:

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

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, postadjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;

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

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

4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title including the attorney representing a child pursuant to the provisions of subsection C of Section 7002-1.2 of this title or representing a child pursuant to the laws relating to child abuse and neglect.

Such attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;

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

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

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

8. The Office of Juvenile Affairs;

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

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

11. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, legal guardian, foster parent, custodian or other family members;

12. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of child abuse or neglect, provided the Department may limit such

disclosure to summaries or to information directly necessary for the purpose of such disclosure;

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

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

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

- a. the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

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

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

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

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

20. The Oklahoma Health Care Authority;

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

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

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

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

B. In accordance with the rules promulgated for such purpose pursuant to the provisions of Section 620.6 of this title, records may be inspected and their contents disclosed without a court order to participating agencies.

C. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may

be necessary to secure appropriate care, treatment, protection or supervision of a child alleged to be abused or neglected.

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

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

2. At any time subsequent to seven (7) days of the date the person responsible for the child has been criminally charged, the Department of Human Services, the Oklahoma Commission on Children and Youth, or the district attorney may release the following information to the public:

- a. a confirmation that a report has been made concerning the alleged victim or other children living in the same household and whether an investigation has begun,
- b. confirmation as to whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department of Human Services in response to any report of child abuse or neglect, the specific recommendation made to the district attorney by the Department of Human

Services, and any actions taken by the district attorney after submission of any investigative report, and

- c. the dates of any judicial proceedings prior to the child's death or near death, specific recommendations made by the Department of Human Services in any progress reports submitted to the court, a summary of each participant's recommendations made at the judicial proceedings including recommendations made at the hearing as it relates to custody or placement of a child and, and the rulings of the court.

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

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7008-1.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

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

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

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7008-1.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Committee shall consist of sixteen (16) members appointed as follows:

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

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

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

4. Three members shall be appointed by the Director of the Department of Human Services, one of which shall be an attorney;

5. Two members shall be appointed by the Executive Director of the Office of Juvenile Affairs, one of which shall be an attorney;

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

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

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

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

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

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

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7008-1.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

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

1. To consolidate similar statutes;
2. To renumber children and juvenile law statutes;
3. To repeal obsolete or duplicate statutes or any statutes which shall have been declared unconstitutional by court decision;
4. To create a recommended Children's Code Article in Title 10 of the Oklahoma Statutes;
5. To incorporate into the Children's Code Article as many existing statutes relating to children and juvenile law procedure found throughout the Oklahoma Statutes as is practicable;
6. To update statutory references within each section relating to children and juvenile law procedure;
7. To clarify and update existing statutory language;

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

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

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

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

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

3. The Oklahoma Children and Juvenile Law Reform Committee shall submit a summary of every recommended change and addition to existing laws at the time the recommended Children's Code Article and any amendments are presented to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

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

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

A. Within fifteen (15) days from the initial appointment of membership for the Oklahoma Children and Juvenile Law Reform Committee, the Speaker of the House of Representatives and the

President Pro Tempore of the Senate shall each appoint one member of the Committee to serve as cochairs. If a vacancy occurs in such office, a new cochair shall be appointed from the Committee in the same manner as the original appointment, who shall serve until June 30, 2008.

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

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

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

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

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

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

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

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7008-1.5 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Children and Juvenile Law Reform Committee shall provide a written progress report to the President Pro Tempore of

the Senate and the Speaker of the House of Representatives on or before March 1, 2007.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7008-1.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

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

SECTION 13. 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.

K. The Director of the Department of Human Services or designee, shall have the authority to request an investigation be conducted by the Oklahoma State Bureau of Investigation in cases where it has been determined that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

SECTION 14. AMENDATORY 74 O.S. 2001, Section 150.5, as last amended by Section 1, Chapter 278, O.S.L. 2005 (74 O.S. Supp. 2005, Section 150.5), is amended to read as follows:

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

- a. the Governor,
- b. the Attorney General,
- c. the Council on Judicial Complaints upon a vote by a majority of the Council, ~~or~~

- d. the chair of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of the Committee, or
- e. the Director of the Department of Human Services, or designee.

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

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

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

D. All records relating to any investigation being conducted by the Bureau, including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title, shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the Bureau may disclose, at the discretion of the Director, such investigative

information to officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions. Officers and agents of the Bureau may also disclose, at the discretion of the Director, such investigative information to appropriate accreditation bodies for the purposes of the Bureau's obtaining or maintaining accreditation. Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section, and the Attorney General in the case of investigations initiated by the Insurance Commissioner, shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office.

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

F. The State Treasurer shall initiate a complete background investigation of the positions with the written consent of the persons who are the subject of the investigation pursuant to

subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes. The Bureau shall advise the State Treasurer and the Cash Management and Investment Oversight Commission in writing of the results of the investigation.

SECTION 15. This act shall become effective November 1, 2006.

50-2-7979            GRS            01/18/06