

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2912

By: Morgan (Danny) of the House

and

Lamb of the Senate

AS INTRODUCED

An Act relating to children; creating the Child Welfare Reform Act of 2006; amending 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), which relates to custody or guardianship; providing an exception to certain custody, guardianship and visitation restriction; amending 10 O.S. 2001, Section 601.6, which relates to Office of Juvenile System Oversight; providing standing to petition court under certain circumstances; allowing for the establishment of a mediation program for foster parents; amending 10 O.S. 2001, Sections 7003-3.7, 7003-4.6, 7003-5.1, 7003-6.2A, 7003-8.1, 7005-1.4 and 7006-1.1, which relate to the Oklahoma Children's Code; modifying requirements for court-appointed special advocates; clarifying scope of certain prohibited acts; providing a presumption under certain circumstances; providing access to certain documents; expanding scope of hearing requirement; providing time limitation for issuance of findings made by the court; expanding scope of inquiry to other person in the home; updating language; modifying certain time limitation; requiring certain entities to provide certain information to the public; modifying scope of certain finding; directing the judge to order a criminal investigation under certain circumstances; amending 10 O.S. 2001, Section 7112, which relates to appointment of representatives for child; directing the appointment of an attorney for allegedly abused or neglected child; 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 district court judges 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 13 of this act shall be known and may be cited as the "Child Welfare Reform Act of 2006".

SECTION 2. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), is amended to read as follows:

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

1. A parent or to both parents jointly;
2. A grandparent;
3. A person who was indicated by the wishes of a deceased parent;
4. A relative of either parent;
5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or
6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

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

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

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

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

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

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

4. The noncustodial parent has been convicted of any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;

5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code and the noncustodial parent has not successfully completed a service or treatment plan if required by the court; or

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

C. The court shall consider the preference of the child in awarding custody of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes.

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

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- b. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,
- d. has been convicted of domestic abuse within the past five (5) years,
- e. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- f. is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. is residing with a person who has been convicted of domestic abuse within the past five (5) years.

2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, or guardianship granted to:

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

- b. a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,
- d. a person who has been convicted of domestic abuse within the past five (5) years,
- e. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- f. a person who is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. a person who is residing with a person who has been convicted of domestic abuse within the past five (5) years.

3. Custody of, guardianship of, or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm. Provided, no parent shall be deprived of or restricted in custody, visitation, or contact with a child, nor shall the child be placed in foster care because the parent reasonably believes that the child is a victim of child abuse or the effects of domestic violence and said parent acts lawfully in

response to such reasonable belief in order to protect the child or obtain treatment for the child.

E. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.

F. For purposes of this section:

1. "Alcohol-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;

2. "Domestic abuse" has the same meaning as such term is defined in Section 60.1 of Title 22 of the Oklahoma Statutes;

3. "Drug-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and

4. "Supervised visitation" means a program established pursuant to Section 5 110.1a of ~~this act~~ Title 43 of the Oklahoma Statutes.

SECTION 3. 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.

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

B. The Office of Juvenile System Oversight shall:

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

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

3. Have standing to petition the court directly in any case where the Office, as a result of an investigation conducted by the Office, has reason to believe that there is a risk of imminent danger to the health or safety of a child;

4. Establish a program for foster parents which shall mediate complaints made by foster parents that relate to certain actions, inaction or decisions of the Department of Human Services, the Department of Juvenile Justice, or child-placing agencies that may adversely affect the rights of foster parents as provided for in Section 7206.1 of this title;

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

~~4-~~ 6. Provide recommendations to the Oklahoma Commission on Children and Youth on or before May 1 of each year.

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

SECTION 4. 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. 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. Any court-appointed special advocate having prior knowledge of any party to a case shall disclose such knowledge and shall not be appointed to the case.

6. The role of the court-appointed special advocate shall be limited to advocating for the best interests of the child at issue. The court-appointed special advocate shall be prohibited from substituting their own opinions and judgments for the wishes of the child.

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 prohibition against ex parte contacts and conflicts of interest with the judge hearing a case shall, in addition to the general applicability of the prohibition, include contacts between a judge and guardian ad litem, attorney for the child, custody evaluators, mental health professionals, investigators of the Department of Human Services, court-appointed special advocates, and other such persons traditionally participating in child custody and visitation cases.

F. 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 5. AMENDATORY 10 O.S. 2001, Section 7003-4.6, is amended to read as follows:

Section 7003-4.6 A. The court, on its own motion or upon motion of a party, may determine that reasonable efforts to provide for the return of a child to the child's home or to preserve the family of the child shall not be required prior to or following the adjudicatory hearing if the court determines based upon competent evidence that:

1. The parent, legal guardian or custodian has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;

2. The child or a sibling of the child:

- a. has been previously adjudicated deprived pursuant to the Oklahoma Children's Code or laws from other states

or territories as a result of sexual abuse or severe physical abuse,

- b. following adjudication, has been removed from the custody of the parent, legal guardian or custodian,
- c. has been returned to the custody of the parent, legal guardian or custodian from whom the child had originally been taken, and
- d. has been removed from the custody of the parents, legal guardian or custodian of the child, pursuant to the provisions of the Oklahoma Children's Code, due to sexual abuse or severe physical abuse;

3. The child is an abandoned infant;

4. The parent, legal guardian or custodian of the child has been convicted of the murder of any child or aided or abetted, attempted, conspired or solicited the commission of murder of any child;

5. The parent, legal guardian or custodian of the child has been convicted of voluntary manslaughter of another child of the parent, legal guardian or custodian or aided or abetted, attempted, conspired in or solicited the commission of voluntary manslaughter of another child of the parent, legal guardian or custodian or another child within the household where the child resided;

6. The child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of sexual abuse, severe neglect or a felonious assault resulting in serious bodily injury to the child, a sibling of the child, or a child within the household where the child resides, by the parent, legal guardian or custodian of the child;

7. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the

parent who committed the rape or act and whose child has been placed out of the home;

8. The parents have deserted a child without good cause or excuse and such desertion continues for a period of at least six (6) months immediately prior to the filing of the petition adjudicating the child deprived or petition to terminate parental rights;

9. The parent of the child willfully abandoned the child without regard to length of abandonment, and the court finds that the abandonment itself constituted a serious danger to the health and safety of the child;

10. A child has resided out of the child's home under court order for a cumulative period of more than one (1) year within a three-year period following a deprived child adjudication;

11. a. The court ordered a permanent plan of adoption, guardianship, or other permanent out-of-home placement for any siblings of the child because the parent failed to correct the conditions which led to initial court intervention with the sibling after the sibling had been removed from that parent, or

b. The parental rights of a parent over any sibling of the child had been permanently severed and, according to the findings of the court, the parent had not subsequently made a reasonable effort to correct the problems that led to removal of the sibling of that child from that parent;

12. The parent, legal guardian or custodian who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state or who has been convicted of a sexual felony offense pursuant to Section 1024.2, 1031, 1040.52, 1040.53, 1081, 1085, 1086, 1117, 1118, 1119, 1192 or 1192.1 of Title 21 of the Oklahoma Statutes; or

13. The parent, legal guardian or custodian of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the deprived petition which brought that child to the court's attention.

B. Upon a determination by the court that any of the conditions specified in subsection A of this section exist, the court shall conduct a permanency hearing within thirty (30) days of the determination by the court pursuant to the provisions of Section 7003-5.6d of this title. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan.

C. When the parent, legal guardian or custodian of a child:

1. Stipulates that the child is deprived; and

2. A determination has not been made as to who is responsible for actions resulting in the deprived status of the child; and

3. The judge has ordered a criminal investigation be conducted by the Oklahoma State Bureau of Investigation into the circumstances of the case,

it shall be presumed to be in the best interest of the child that the child not be returned to the home where the alleged deprivation occurred until after completion of the criminal investigation, review, and determination of findings by the court.

D. Except when a petition for the termination of parental rights is required to be filed pursuant to the provisions of Section 7003-4.7 of this title, the district attorney, the child's attorney, or both may file a petition for termination of parental rights.

SECTION 6. AMENDATORY 10 O.S. 2001, Section 7003-5.1, is amended to read as follows:

Section 7003-5.1 A. After making an order of adjudication for a deprived child, the court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the deprived child, including but not

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

B. Before making an order of disposition, the court shall advise the district attorney, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and the conclusion of reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. Parents, guardians, and legal custodians shall be provided full and timely access to all custody and mental health evaluations and reports that are considered in any custody or visitation proceeding, including all underlying data for such evaluations and reports.

C. An order of disposition shall include a specific finding and order of the court relative to the liability and accountability of the parents for the care and maintenance of the child as authorized by Part 7 of this article, except where custody is placed with both parents.

~~C.~~ D. On its own motion or that of the district attorney, or of the parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for temporary custody of the child, or his release from temporary custody subject to supervision by the court, during the period of the continuance.

SECTION 7. 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 the release of the child from state custody.

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 within forty-five (45) days from the date of the hearing. 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 8. AMENDATORY 10 O.S. 2001, Section 7003-8.1, is amended to read as follows:

Section 7003-8.1 A. In placing a child in the custody of an individual or in the custody of a private agency or institution, the court shall, and the Department of Human Services shall, if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

B. Except as otherwise provided by this section or by law, it shall be left to the discretion of the judge to place the custody of children where their total needs will best be served.

C. If the child is removed from the custody of the child's parent, the court or the Department of Human Services, as applicable, shall immediately consider concurrent permanency planning, so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child.

D. For purposes of this subsection, the State of Oklahoma elects to make subparagraph (A) of paragraph 20 of subsection 3 of Section 471(a) of the Social Security Act (Public Law 105-89) inapplicable to Oklahoma. Instead, the State of Oklahoma requires that:

1. Except as otherwise provided by this subsection, on and after the effective date of this act, the Department or a child-placing agency shall not place a child in out-of-home placement with a foster parent if the foster parent or any other person residing in the home of the foster parent has been convicted of any of the following felony offenses:

- a. within the five-year period preceding the application date, physical assault, battery or a drug-related offense,
- b. child abuse or neglect,
- c. domestic abuse,
- d. a crime against a child, including, but not limited to, child pornography, or
- e. a crime involving violence, including, but not limited to, rape, sexual assault or homicide, but excluding physical assault or battery; and

2. a. A prospective adoptive parent or guardian or kinship guardian or other long-term placement provider shall not be an approved placement for the child if the person or any other person residing in the home has

been convicted of any of the following felony offenses:

- (1) within the five-year period preceding the date of the petition, physical assault, battery or a drug-related offense, except as otherwise authorized by this subsection,
- (2) child abuse or neglect,
- (3) domestic abuse,
- (4) a crime against a child, including, but not limited to, child pornography, and
- (5) a crime involving violence, including, but not limited to, rape, sexual assault or homicide, but excluding physical assault or battery.

b. A prospective adoptive parent or long-term placement provider may be an approved placement regardless of whether such parent or provider has been convicted of any of the felony offenses specified by division (1) of subparagraph a of this paragraph, if an evaluation has been made and accepted by the court which considers the nature and seriousness of the crime in relation to the adoption or long-term placement, the time elapsed since the commission of the crime, the circumstances under which the crime was committed, the degree of rehabilitation, the number of crimes committed by the person involved, and a showing by clear and convincing evidence that the child will not be at risk by such placement.

E. 1. Under no circumstances shall a child be placed in the custody of an individual subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act.

2. In addition, prior to placing a child in the custody of an individual, the court shall inquire as to whether the individual has been previously convicted of any other felony or a relevant misdemeanor or has any felony or relevant misdemeanor charges pending. The court shall also inquire as to whether any other person in the home has been previously convicted of a felony or a relevant misdemeanor or has any felony or relevant misdemeanor charges pending.

3. Prior to the custody order being entered, the individual seeking custody shall respond by certified affidavit or through sworn testimony to the court and shall provide an Oklahoma criminal history record obtained pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes.

4. For purposes of this subsection the terms:

- a. "relevant misdemeanor" may include, but shall not be limited to, assault and battery, alcohol- or drug-related offenses, crimes involving domestic abuse and other offenses deemed relevant by the court, and
- b. "individual" shall not include a parent, legal guardian, or custodian of the child.

F. The provisions of this section shall not apply in any paternity or domestic relations case, unless otherwise ordered by the court.

SECTION 9. 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~~ The 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 of the child, 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~~ the child;

14. A parent, legal guardian or custodian of the child who is the subject of ~~such~~ the 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~~ the 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~~ the 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~~ the 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~~ the 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 of the child 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~~ the official duties of the employee 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 of the child, 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 but not more than thirty (30) 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 court clerk, and the judge having jurisdiction over the case shall release the following certain information to the public as follows:

- a. a confirmation ~~that~~ shall be provided by the Department of Human Services and the Oklahoma Commission on Children and Youth as to whether 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 shall be provided by the Department of Human Services and the Oklahoma Commission on Children and Youth 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 and the Oklahoma Commission on Children and Youth in response to any report of child abuse or neglect, 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 of the child shall be

provided by the district court clerk, a summary of each participant's

- d. the recommendations made submitted by each participant at the judicial proceedings shall be provided in writing by the judge having jurisdiction over the case, and
- e. the rulings of the court shall be provided in writing by the judge having jurisdiction over the case.

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 of the child victim 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 10. AMENDATORY 10 O.S. 2001, Section 7006-1.1, is amended to read as follows:

Section 7006-1.1 A. Pursuant to the provisions of the Oklahoma Children's Code, the finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a parent to a child in the following situations; provided, however, the paramount consideration in proceedings concerning termination of parental rights shall be the health, safety or welfare and best interests of the child:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph 4 2 of subsection B of Section 7503-2.1 of this title, who desires to terminate such

parent's parental rights; provided that the court finds that such termination is in the best interests of the child;

2. A finding that a parent who is entitled to custody of the child has abandoned the child. For purposes of this paragraph the term "abandonment" includes, but is not limited to, the following:

- a. the parent has left the child alone or in the care of another who is not the parent of the child without identifying the child or furnishing a means of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the child alone or in the care of another who is not the parent of the child and expressed a willful intent by words, actions, or omissions not to return for the child, or
- c. the parent fails to establish and/or maintain a substantial and positive relationship with the child for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this paragraph, "establish and/or maintain a substantial and positive relationship" includes, but is not limited to:
 - (1) frequent and regular contact with the minor through frequent and regular visitation and/or frequent and regular communication to or with the child, and
 - (2) the exercise of parental rights and responsibilities.

Incidental or token visits or communications shall not be sufficient to establish and/or maintain a substantial and positive relationship with the child;

3. A finding that the child is an abandoned infant;

4. A finding that the parent of a child:

a. has voluntarily placed physical custody of the child with the Department of Human Services or with a child-placing agency for out-of-home placement,

b. has not complied with the placement agreement, and

c. has not demonstrated during such period a firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child;

5. A finding that:

a. the child has been adjudicated to be deprived, and

b. such condition is caused by or contributed to by acts or omissions of the parent, and

c. termination of parental rights is in the best interests of the child, and

d. the parent has failed to show that the condition which led to the adjudication of a child deprived has been corrected although the parent has been given not less than the time specified by Section 7003-5.5 of this title to correct the condition;

6. A finding that a subsequent child has been born to a parent whose parental rights to any other child has been terminated by the court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other child has not been corrected. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney or the child's attorney;

7. A finding that a parent who does not have custody of the child has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights, willfully failed, refused or neglected to contribute to the support of such child:

- a. in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
- b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in an order.

Incidental or token support shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

8. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 or 1123 of Title 21 of the Oklahoma Statutes, or Section 7115 of this title;

9. A conviction in a criminal action that the parent:

- a. caused the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child,
- b. caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,
- c. committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,
- d. committed voluntary manslaughter of another child of the parent, or aided or abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or

- e. committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent;
10. A finding in a deprived child action either that:
- a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court,
 - b. the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse,
 - c. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse,
 - d. the child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of severe sexual abuse, severe, heinous or shocking neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household where the child resides, by the parent of the child, or
 - e. the parent has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;

11. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;

12. A finding that all of the following exist:

- a. the child has been adjudicated deprived, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has been incarcerated, and
- d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and
- e. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of parental rights;

13. A finding that all of the following exist:

- a. the child has been adjudicated deprived, and

- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- d. the continuation of parental rights would result in harm or threatened harm to the child, and
- e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and
- f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his or her parental rights;

14. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's attention;

15. A child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the adjudication date, or

b. the date that is sixty (60) days after the date on which the child is removed from the home.

B. An order directing the termination of parental rights is a final appealable order.

C. 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.

D. 1. A petition for termination of parental rights may be filed by the district attorney or the attorney of a child alleged to be or adjudicated deprived.

2. A petition for termination of parental rights shall be filed by the district attorney for those petitions required to be filed pursuant to the provisions of Section 7003-4.7 of this title.

3. If a child's attorney files a petition for the termination of the parental rights of the parents of the child, the district attorney shall join in the petition or motion for those petitions or motions required to be filed by the district attorney pursuant to the provisions of Section 7003-4.7 of this title.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7104.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

When the parent, legal guardian or custodian of a child:

1. Stipulates that the child is deprived;

2. A determination has not been made as to who is responsible for actions resulting in the deprived status of the child; and

3. The abuse or neglect rises to a level of criminally injurious conduct,
the judge shall order a criminal investigation be conducted by the Oklahoma State Bureau of Investigation into the circumstances of the case at issue.

SECTION 12. AMENDATORY 10 O.S. 2001, Section 7112, is amended to read as follows:

Section 7112. A. 1. In every criminal case filed pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the judge of the district court ~~may~~ shall appoint an attorney-at-law to appear for and represent a child who is the alleged victim of child abuse or neglect.

2. The attorney may be allowed a reasonable fee for such services and shall meet with the child as soon as possible after receiving notification of the appointment.

3. Except for good cause shown to the court, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing.

4. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the ~~child's~~ parents of the child, legal guardian, custodian or other person responsible for the ~~child's~~ health or safety of the child made pursuant to this section.

5. The attorney shall represent the child and any expressed interests of the child. To that end, the attorney shall make such further investigation as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court, and participate further in the proceedings to the degree appropriate for adequately representing the child.

B. A court-appointed special advocate or guardian ad litem as defined by the Oklahoma Children's Code and the Oklahoma Juvenile Code may be appointed to represent the best interests of the child who is the alleged subject of child abuse or neglect. The court-appointed special advocate or guardian ad litem shall be given access to all reports relevant to the case and to reports of service providers and of examination of the ~~child's~~ parents of the child,

legal guardian, custodian or other person responsible for the ~~child's~~ health or safety of the child made pursuant to this section including but not limited to, information authorized by the Oklahoma Children's Code and the Oklahoma Juvenile Code.

C. At such time as the information maintained by the statewide registry for child abuse, sexual abuse, and neglect is indexed by name of perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 13. 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. a district court judge.

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 14. This act shall become effective November 1, 2006.

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