

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2530

By: Steele

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to children; amending 10 O.S. 2001,  
9 Section 601.6, as amended by Section 2, Chapter 205,  
10 O.S.L. 2006 (10 O.S. Supp. 2007, Section 601.6),  
11 which relates to the Office of Juvenile System  
12 Oversight; authorizing the copying of certain  
13 records; amending 10 O.S. 2001, Section 7003-2.4, as  
14 last amended by Section 1, Chapter 196, O.S.L. 2007  
15 (10 O.S. Supp. 2007, Section 7003-2.4), which relates  
16 to an emergency custody hearing; providing for a  
17 specific form to be filed of record in lieu of a  
18 hearing by agreement of certain persons; amending  
19 Section 4, Chapter 351, O.S.L. 2007 (10 O.S. Supp.  
20 2007, Section 7005-1.9), which relates to the  
21 disclosure of certain information in cases of death  
22 or near-death of a child; extending certain time  
23 limitations; amending Sections 10, 11, 12 and 13,  
24 Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2007,  
Sections 7008-1.2, 7008-1.3, 7008-1.4 and 7008-1.5),  
which relate to the Oklahoma Children and Juvenile  
Law Reform Committee; extending duration of  
Committee; extending time for submission of certain  
draft; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 601.6, as  
amended by Section 2, Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2007,  
Section 601.6), is amended to read as follows:

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

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

14 B. The Office of Juvenile System Oversight shall:

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

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

22 3. Establish, in accordance with the Dispute Resolution Act,  
23 Sections 1801 through 1813 of Title 12 of the Oklahoma Statutes, a  
24 voluntary program for foster parents to mediate complaints

1 concerning the rights of foster parents, as provided for in Section  
2 7206.1 of this title, that relate to certain actions, inactions or  
3 decisions of the Department of Human Services, the Department of  
4 Juvenile Justice, or child-placing agencies that may adversely  
5 affect the safety and well-being of children in the custody of the  
6 state;

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

13 5. Provide recommendations to the Oklahoma Commission on  
14 Children and Youth on or before May 1 of each year.

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

19 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-2.4, as  
20 last amended by Section 1, Chapter 196, O.S.L. 2007 (10 O.S. Supp.  
21 2007, Section 7003-2.4), is amended to read as follows:

22 Section 7003-2.4 A. 1. The peace officer or an employee of  
23 the court shall provide the parent, legal guardian, or custodian of  
24

1 a child immediate written notice of the protective or emergency  
2 custody of the child whenever possible.

3 2. The written notice shall:

4 a. inform the parents, legal guardian, or custodian that  
5 the child has been removed from the home,

6 b. inform the parent, legal guardian, or custodian of the  
7 child that an emergency custody hearing to determine  
8 custody of the child will occur within two (2)  
9 judicial days from the date the child was removed from  
10 the home, and

11 c. contain information about the:

12 (1) emergency custody hearing process including, but  
13 not limited to, the date, time and place that the  
14 child was taken into protective or emergency  
15 custody,

16 (2) nature of the allegation that led to placement of  
17 the child into protective or emergency custody,

18 (3) address and telephone number of the local and  
19 county law enforcement agencies,

20 (4) phone number of the local child welfare office of  
21 the Department of Human Services, and

22 (5) right of the parent, legal guardian or custodian  
23 to contact an attorney.

24

1           3. The written notice shall also contain the following or  
2 substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE  
3 OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL  
4 STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR  
5 COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS  
6 A PARENT MAY BE TERMINATED."

7           B. 1. Within the next two (2) judicial days following the  
8 child being taken into protective or emergency custody, the court  
9 shall conduct an emergency custody hearing to determine whether  
10 evidence or facts exist that are sufficient to demonstrate to the  
11 court there is reason to believe the child is in need of protection  
12 due to abuse or neglect, or is in surroundings that are such as to  
13 endanger the health, safety or welfare of the child.

14           2. At the emergency custody hearing, the court shall advise the  
15 parent, legal guardian or custodian of the child in writing of the  
16 procedure which will be followed with regard to determining custody  
17 of the child, including, but not limited to:

- 18           a. any right of the parent or legal guardian or custodian
- 19           to testify and present evidence at court hearings,
- 20           b. the right to be represented by an attorney at court
- 21           hearings as authorized by law,
- 22           c. the consequences of failure to attend any hearings
- 23           which may be held, and

24

1 d. the right to appeal and the procedure for appealing  
2 the finding of a court on custody issues as authorized  
3 by law.

4 3. a. At the emergency custody hearing, the court shall:

5 (1) release the child to the child's parent, legal  
6 guardian or custodian or other responsible adult  
7 without conditions or under such conditions as  
8 the court finds reasonably necessary to ensure  
9 the health, safety or welfare of the child, or

10 (2) continue the child in or place the child into  
11 emergency custody if continuation of the child in  
12 the child's home is contrary to the health,  
13 safety or welfare of the child,

14 (3) obtain information from the parent, legal  
15 guardian or custodian necessary to identify and  
16 locate kinship placement resources. If such  
17 information indicates that within one (1) year of  
18 the emergency custody hearing the child had  
19 resided with a grandparent for six (6) months,  
20 and that such grandparent was the primary  
21 caregiver and provided primary financial support  
22 for the child during such time, the court shall  
23 provide notice and an opportunity to be heard at  
24 future hearings to such grandparent, and

1 (4) require the Department to provide to any  
2 custodian or other person caring for the child  
3 information on Department of Human Services  
4 programs and services available to the child and  
5 provide written notice of any further proceedings  
6 to any foster or preadoptive parents or relatives  
7 providing care for a child.

8 b. If a child has been removed from the custodial parent  
9 of the child and the court, in the best interests of  
10 the child, is unable to release the child to the  
11 custodial parent, the court shall give priority for  
12 placement of the child with the noncustodial parent of  
13 the child unless such placement would not be in the  
14 child's best interests. If the court cannot place the  
15 child with the noncustodial parent, custody shall be  
16 consistent with the provisions of Section 21.1 of this  
17 title. If custody of the child cannot be made  
18 pursuant to the provisions of Section 21.1 of this  
19 title, the reason for such determination shall be  
20 documented in the court record.

21 C. If it is determined by agreement of the district attorney  
22 and the Department of Human Services that an emergency custody  
23 hearing is not needed, the following form or a substantially similar  
24

1 form shall be completed and signed by the district attorney and the  
2 Department and filed of record:

3 IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY

4 STATE OF OKLAHOMA

5 IN THE MATTER OF:

6 \_\_\_\_\_

7 ALLEGED DEPRIVED CHILD (REN)

8 MEMORANDUM

9 DATE OF DECLINE:

10 CHILD WELFARE WORKER:

11 ASSISTANT DISTRICT ATTORNEY:

12 REASON FOR DECLINE:

13 \_\_\_ INVESTIGATION REVEALED ALLEGATIONS NOT CONFIRMED

14 \_\_\_ SERVICES WERE OFFERED AND ACCEPTED

15 \_\_\_ PARENT/CARETAKER HAS TAKEN APPROPRIATE STEPS TO

16 PROTECT CHILD FROM HARM

17 \_\_\_ OTHER:

18 NOTES:

19 CHILD (REN) RELEASED TO:

20 \_\_\_\_\_

21 ASSISTANT DISTRICT ATTORNEY

22 I work for the Department of Human Services and am requesting that

23 the District Attorney's Office release the above-mentioned

24

1 child(ren) from temporary emergency custody and that a Petition not  
2 be filed for court intervention.

3 \_\_\_\_\_  
4 DHS CHILD WELFARE WORKER.

5 D. 1. Except as otherwise provided by this subsection, a  
6 petition for a deprived child proceeding shall be filed and a  
7 summons issued within five (5) judicial days from the date of  
8 assumption of custody; provided, however, such time period may be  
9 extended a period of time not to exceed fifteen (15) calendar days  
10 from the date of assumption of custody of the child if, upon request  
11 of the district attorney at the emergency custody hearing, the court  
12 determines there are compelling reasons to grant additional time for  
13 the filing of the petition for a deprived child proceeding.

14 2. If the petition is not filed as required by this subsection,  
15 then the emergency custody order shall expire. The district  
16 attorney shall submit for filing in the court record a written  
17 record specifying the reasons why the petition was not filed and  
18 specifying to whom the child was released.

19 ~~D.~~ E. If a petition is filed within the time period specified  
20 in subsection ~~C~~ D of this section, the emergency custody order shall  
21 remain in force and effect for not longer than sixty (60) days,  
22 except as otherwise provided by this subsection.

23 The emergency custody order shall not be extended beyond sixty  
24 (60) days absent a showing that such further extension is necessary

1 to ensure the health, safety or welfare of the child and is in the  
2 best interests of the child.

3 ~~E.~~ F. 1. The court may hold additional hearings at such  
4 intervals as may be determined necessary by the court to provide for  
5 the health, safety or welfare of the child.

6 2. The parent, legal guardian or custodian of the child, the  
7 child's attorney, the district attorney and guardian ad litem if  
8 appointed shall be given prior adequate notice of the date, time,  
9 place and purpose of any hearing by the court.

10 ~~F.~~ G. In scheduling hearings, the court shall give priority to  
11 proceedings in which a child is in emergency custody.

12 ~~G.~~ H. 1. An order of the court providing for the removal of a  
13 child alleged to be deprived from the home of such child shall not  
14 be entered unless the court makes a determination:

15 a. that continuation of the child in the child's home is  
16 contrary to the health, safety or welfare of the  
17 child, and

18 b. as to whether or not reasonable efforts were made to  
19 prevent the need for the removal of the child from the  
20 child's home, or

21 c. as to whether or not an absence of efforts to prevent  
22 the removal of the child from the child's home is  
23 reasonable because the removal is due to an alleged  
24

1 emergency and is for the purpose of providing for the  
2 health, safety or welfare of the child, or

3 d. that reasonable efforts to provide for the return of  
4 the child to the child's home are not required  
5 pursuant to Section 7003-4.6 of this title; provided,  
6 however, upon such determination, the court shall  
7 inform the parent that a permanency hearing will be  
8 held within thirty (30) days from the determination.

9 2. In all proceedings or actions pursuant to this subsection,  
10 the child's health, safety or welfare shall be the paramount  
11 concern.

12 SECTION 3. AMENDATORY Section 4, Chapter 351, O.S.L.  
13 2007 (10 O.S. Supp. 2007, Section 7005-1.9), is amended to read as  
14 follows:

15 Section 7005-1.9 A. For purposes of this section, the term  
16 "near death" means the child is in serious or critical condition, as  
17 certified by a physician, as a result of abuse or neglect.

18 B. In cases involving the death or near death of a child when a  
19 person responsible for the child has been charged by information or  
20 indictment with committing a crime resulting in the death or near  
21 death of the child, there shall be a presumption that the best  
22 interest of the public will be served by public disclosure of  
23 certain information concerning the circumstances of the  
24 investigation of the death or near death of the child and any other

1 investigations within ~~the last~~ three (3) years of the death or near  
2 death and one (1) year after the death or near death concerning that  
3 child, or other children while living in the same household.

4 C. 1. At any time subsequent to seven (7) days, but no more  
5 than thirty (30) days, of the date the person responsible for the  
6 child has been criminally charged, the Department of Human Services,  
7 the district attorney, the district court clerk, and the judge  
8 having jurisdiction over the case, upon request, shall release  
9 certain information to the public as follows:

10 a. a confirmation shall be provided by the Department as  
11 to whether a report has been made concerning the  
12 alleged victim or other children while living in the  
13 same household and whether an investigation has begun,

14 b. confirmation shall be provided by the Department as to  
15 whether previous reports have been made and the dates  
16 thereof, a summary of those previous reports, the  
17 dates and outcome of any investigations or actions  
18 taken by the Department in response to a previous  
19 report of child abuse or neglect, and the specific  
20 recommendation made to the district attorney and any  
21 subsequent action taken by the district attorney,

22 c. the dates of any judicial proceedings prior to the  
23 death or near death of the child,  
24

- 1 d. recommendations submitted by each participant in  
2 writing at the judicial proceedings including  
3 recommendations made at the hearing as they relate to  
4 custody or placement of a child, and  
5 e. the rulings of the court.

6 2. Specific recommendations made and services rendered by the  
7 Department described in any progress reports of a pending case  
8 submitted to the court may be disclosed by the Department.

9 D. 1. At any time subsequent to seven (7) days, ~~but no more~~  
10 ~~than thirty (30) days, of~~ after the date the person responsible for  
11 the child has been criminally charged, the Oklahoma Commission on  
12 Children and Youth shall, upon request, release certain information  
13 to the public within sixty (60) days of the request as follows:

- 14 a. a confirmation shall be provided by the Commission as  
15 to whether a report of suspected child abuse or  
16 neglect has been made concerning the alleged victim or  
17 other children while living in the same household and  
18 whether an investigation has begun,  
19 b. confirmation shall be provided by the Commission as to  
20 whether previous reports of suspected child abuse or  
21 neglect have been made and the dates thereof, a  
22 summary of those previous reports, the dates and  
23 outcome of any investigations or actions taken by the  
24 Department and the Commission in response to any

1 previous report of child abuse or neglect, and the  
2 specific recommendation made to the district attorney  
3 and any subsequent action taken by the district  
4 attorney,

5 c. the dates of any judicial proceedings prior to the  
6 death or near death of the child,

7 d. recommendations submitted by the Department and the  
8 Commission shall be provided in writing including  
9 recommendations made at the hearing as they relate to  
10 custody or placement of a child, and

11 e. the rulings of the court.

12 2. Specific recommendations made by the Commission described in  
13 any progress reports of a pending case submitted to the court may be  
14 disclosed by the Commission.

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

22 SECTION 4. AMENDATORY Section 10, Chapter 205, O.S.L.  
23 2006 (10 O.S. Supp. 2007, Section 7008-1.2), is amended to read as  
24 follows:

1 Section 7008-1.2 A. The Committee shall consist of twenty (20)  
2 members appointed as follows:

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

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

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

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

14 5. Three members who are employees of the Department of Human  
15 Services shall be appointed by the Director of the Department of  
16 Human Services, one of which shall be an attorney;

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

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

22 8. Three members shall be appointed by the Speaker of the House  
23 of Representatives;

24

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

3           10. One member shall be a judge or a justice of the Supreme  
4 Court of the State of Oklahoma, to be appointed by the justices of  
5 the Supreme Court of the State of Oklahoma;

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

10           12. One member shall be an attorney appointed by the District  
11 Attorneys Council; and

12           13. One member shall be a social worker appointed by the state  
13 chapter of the National Association of Social Workers.

14           B. Each member of the Oklahoma Children and Juvenile Law Reform  
15 Committee initially appointed shall make the appointment known to  
16 the Speaker of the House of Representatives and the President Pro  
17 Tempore of the Senate by August 1, 2006. Appointed members shall  
18 serve until June 30, ~~2008~~ 2009.

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

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

24

1 SECTION 5. AMENDATORY Section 11, Chapter 205, O.S.L.  
2 2006 (10 O.S. Supp. 2007, Section 7008-1.3), is amended to read as  
3 follows:

4 Section 7008-1.3 A. The purposes of the Oklahoma Children and  
5 Juvenile Law Reform Committee shall be to conduct a systematic  
6 review and study of all laws and procedures in ~~Title 10 of the~~  
7 ~~Oklahoma Statutes~~ this title and prepare a recommended draft to  
8 reclassify, update, reform and recodify the statutes. The duties of  
9 the Committee in preparing recommendations shall be as follows:

- 10 1. To consolidate similar statutes;
- 11 2. To renumber children and juvenile law statutes;
- 12 3. To repeal obsolete or duplicate statutes or any statutes  
13 which have been declared unconstitutional by court decision;
- 14 4. To create a recommended Children's Code Article in ~~Title 10~~  
15 ~~of the Oklahoma Statutes~~ this title;
- 16 5. To incorporate into the Children's Code Article as many  
17 existing statutes relating to children and juvenile law procedure  
18 found throughout the Oklahoma Statutes as is practicable;
- 19 6. To update statutory references within each section relating  
20 to children and juvenile law procedure;
- 21 7. To clarify and update existing statutory language;
- 22 8. To recodify those sections of law which relate to children  
23 and juvenile law procedure when the move will improve the location,  
24 use, application and appropriateness of the section; and

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

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

6           C. 1. The Oklahoma Children and Juvenile Law Reform Committee  
7 shall prepare a final draft of a recommended Children's Code  
8 Article, and shall submit the recommended Article to the Speaker of  
9 the House of Representatives and the President Pro Tempore of the  
10 Senate by November 1, ~~2007~~ 2008.

11           2. If, after the Committee submits the recommended Article, the  
12 Committee determines the Article needs additional revisions, the  
13 revisions shall be submitted as one final amendment. The  
14 recommended Article amendment shall be submitted to the Speaker of  
15 the House of Representatives and the President Pro Tempore of the  
16 Senate not later than March 1, ~~2008~~ 2009.

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

22           D. The Oklahoma Children and Juvenile Law Reform Committee  
23 shall cease to function June 30, ~~2008~~ 2009.

24

1 SECTION 6. AMENDATORY Section 12, Chapter 205, O.S.L.  
2 2006 (10 O.S. Supp. 2007, Section 7008-1.4), is amended to read as  
3 follows:

4 Section 7008-1.4 A. Within fifteen (15) days from the initial  
5 appointment of membership for the Oklahoma Children and Juvenile Law  
6 Reform Committee, the Speaker of the House of Representatives and  
7 the President Pro Tempore of the Senate shall each appoint one  
8 member of the Committee to serve as cochairs. If a vacancy occurs  
9 in such office, a new cochair shall be appointed from the Committee  
10 in the same manner as the original appointment, who shall serve  
11 until June 30, ~~2008~~ 2009.

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

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

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

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

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

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

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

9           SECTION 7.           AMENDATORY           Section 13, Chapter 205, O.S.L.  
10 2006 (10 O.S. Supp. 2007, Section 7008-1.5), is amended to read as  
11 follows:

12           Section 7008-1.5 The Oklahoma Children and Juvenile Law Reform  
13 Committee shall provide a written progress report to the President  
14 Pro Tempore of the Senate and the Speaker of the House of  
15 Representatives on or before ~~March~~ August 1, ~~2007~~ 2008.

16           SECTION 8. It being immediately necessary for the preservation  
17 of the public peace, health and safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

20  
21           51-2-10068           SAB           02/15/08

22  
23  
24