

EHB 2530

1 THE STATE SENATE  
2 Tuesday, March 25, 2008

3 ENGROSSED

4 House Bill No. 2530

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2530 - By: Steele, BigHorse, Shumate,  
7 Pittman, Dorman and McAffrey of the House and Coates of the Senate.

8 [ children - Office of Juvenile System Oversight - emergency  
9 custody hearing - Oklahoma Children and Juvenile Law Reform  
10 Committee -  
11 emergency ]

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

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

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

23 It shall be the duty of the Office of Juvenile System Oversight  
24 to conduct regular, periodic, but not less than semiannual,  
25 unannounced inspections of state-operated children's institutions

1 and facilities and to review the reports of the inspections of the  
2 State Fire Marshal and the Department of Health and any agencies  
3 which accredit such institutions and facilities.

4 B. The Office of Juvenile System Oversight shall:

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

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

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

21 4. Issue reports to the Governor, Speaker of the House of  
22 Representatives, President Pro Tempore of the Senate, Chief Justice  
23 of the Supreme Court of the State of Oklahoma, any appropriate

1 prosecutorial agency, the director of the agency under  
2 consideration; and such other persons as necessary and appropriate;  
3 and

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

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

10 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-2.4, as  
11 last amended by Section 1, Chapter 196, O.S.L. 2007 (10 O.S. Supp.  
12 2007, Section 7003-2.4), is amended to read as follows:

13 Section 7003-2.4 A. 1. The peace officer or an employee of  
14 the court shall provide the parent, legal guardian, or custodian of  
15 a child immediate written notice of the protective or emergency  
16 custody of the child whenever possible.

17 2. The written notice shall:

- 18 a. inform the parents, legal guardian, or custodian that  
19 the child has been removed from the home,  
20 b. inform the parent, legal guardian, or custodian of the  
21 child that an emergency custody hearing to determine  
22 custody of the child will occur within two (2)

1           judicial days from the date the child was removed from  
2           the home, and

3           c.    contain information about the:

4           (1)   emergency custody hearing process including, but  
5           not limited to, the date, time and place that the  
6           child was taken into protective or emergency  
7           custody,

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

10          (3)   address and telephone number of the local and  
11          county law enforcement agencies,

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

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

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

22          B.   1.   Within the next two (2) judicial days following the  
23    child being taken into protective or emergency custody, the court

1 shall conduct an emergency custody hearing to determine whether  
2 evidence or facts exist that are sufficient to demonstrate to the  
3 court there is reason to believe the child is in need of protection  
4 due to abuse or neglect, or is in surroundings that are such as to  
5 endanger the health, safety or welfare of the child.

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

- 10 a. any right of the parent or legal guardian or custodian
- 11 to testify and present evidence at court hearings,
- 12 b. the right to be represented by an attorney at court
- 13 hearings as authorized by law,
- 14 c. the consequences of failure to attend any hearings
- 15 which may be held, and
- 16 d. the right to appeal and the procedure for appealing
- 17 the finding of a court on custody issues as authorized
- 18 by law.

- 19 3. a. At the emergency custody hearing, the court shall:
- 20 (1) release the child to the child's parent, legal
- 21 guardian or custodian or other responsible adult
- 22 without conditions or under such conditions as

1 the court finds reasonably necessary to ensure  
2 the health, safety or welfare of the child, or  
3 (2) continue the child in or place the child into  
4 emergency custody if continuation of the child in  
5 the child's home is contrary to the health,  
6 safety or welfare of the child,  
7 (3) obtain information from the parent, legal  
8 guardian or custodian necessary to identify and  
9 locate kinship placement resources. If such  
10 information indicates that within one (1) year of  
11 the emergency custody hearing the child had  
12 resided with a grandparent for six (6) months,  
13 and that such grandparent was the primary  
14 caregiver and provided primary financial support  
15 for the child during such time, the court shall  
16 provide notice and an opportunity to be heard at  
17 future hearings to such grandparent, and  
18 (4) require the Department to provide to any  
19 custodian or other person caring for the child  
20 information on Department of Human Services  
21 programs and services available to the child and  
22 provide written notice of any further proceedings

1 to any foster or preadoptive parents or relatives  
2 providing care for a child.

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

16 C. If it is determined by agreement of the district attorney  
17 and the Department of Human Services that an emergency custody  
18 hearing is not needed, the following form or a substantially similar  
19 form shall be completed and signed by the district attorney and the  
20 Department and filed of record:

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

22 STATE OF OKLAHOMA

23 IN THE MATTER OF:

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ALLEGED DEPRIVED CHILD (REN)

MEMORANDUM

DATE OF DECLINE:

CHILD WELFARE WORKER:

ASSISTANT DISTRICT ATTORNEY:

REASON FOR DECLINE:

\_\_\_ INVESTIGATION REVEALED ALLEGATIONS NOT CONFIRMED

\_\_\_ SERVICES WERE OFFERED AND ACCEPTED

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

PROTECT CHILD FROM HARM

\_\_\_ OTHER:

NOTES:

CHILD (REN) RELEASED TO:

\_\_\_\_\_  
ASSISTANT DISTRICT ATTORNEY

I work for the Department of Human Services and am requesting that  
the District Attorney's Office release the above-mentioned  
child(ren) from temporary emergency custody and that a Petition not  
be filed for court intervention.

\_\_\_\_\_

DHS CHILD WELFARE WORKER.

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

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

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

19        The emergency custody order shall not be extended beyond sixty  
20 (60) days absent a showing that such further extension is necessary  
21 to ensure the health, safety or welfare of the child and is in the  
22 best interests of the child.

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

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

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

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

- 13           a. that continuation of the child in the child's home is  
14           contrary to the health, safety or welfare of the  
15           child, and  
16           b. as to whether or not reasonable efforts were made to  
17           prevent the need for the removal of the child from the  
18           child's home, or  
19           c. as to whether or not an absence of efforts to prevent  
20           the removal of the child from the child's home is  
21           reasonable because the removal is due to an alleged  
22           emergency and is for the purpose of providing for the  
23           health, safety or welfare of the child, or

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

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

10           SECTION 3.           AMENDATORY           Section 4, Chapter 351, O.S.L.  
11           2007 (10 O.S. Supp. 2007, Section 7005-1.9), is amended to read as  
12           follows:

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

16           B.    In cases involving the death or near death of a child when a  
17           person responsible for the child has been charged by information or  
18           indictment with committing a crime resulting in the death or near  
19           death of the child, there shall be a presumption that the best  
20           interest of the public will be served by public disclosure of  
21           certain information concerning the circumstances of the  
22           investigation of the death or near death of the child and any other  
23           investigations within ~~the last~~ three (3) years of the death or near

1 death and one (1) year after the death or near death concerning that  
2 child, or other children while living in the same household.

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

- 9 a. a confirmation shall be provided by the Department as  
10 to whether a report has been made concerning the  
11 alleged victim or other children while living in the  
12 same household and whether an investigation has begun,  
13 b. confirmation shall be provided by the Department as to  
14 whether previous reports have been made and the dates  
15 thereof, a summary of those previous reports, the  
16 dates and outcome of any investigations or actions  
17 taken by the Department in response to a previous  
18 report of child abuse or neglect, and the specific  
19 recommendation made to the district attorney and any  
20 subsequent action taken by the district attorney,  
21 c. the dates of any judicial proceedings prior to the  
22 death or near death of the child,

- 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

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

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

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

12 e. the rulings of the court.

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

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

1 SECTION 4. AMENDATORY Section 10, Chapter 205, O.S.L.  
2 2006 (10 O.S. Supp. 2007, Section 7008-1.2), is amended to read as  
3 follows:

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

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

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

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

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

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

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

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

3           8. Three members shall be appointed by the Speaker of the House  
4 of Representatives;

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

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

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

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

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

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

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

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

6 SECTION 5. AMENDATORY Section 11, Chapter 205, O.S.L.  
7 2006 (10 O.S. Supp. 2007, Section 7008-1.3), is amended to read as  
8 follows:

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

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

1           6. To update statutory references within each section relating  
2 to children and juvenile law procedure;

3           7. To clarify and update existing statutory language;

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

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

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

12           C. 1. The Oklahoma Children and Juvenile Law Reform Committee  
13 shall prepare a final draft of a recommended Children's Code  
14 Article, and shall submit the recommended Article to the Speaker of  
15 the House of Representatives and the President Pro Tempore of the  
16 Senate by November 1, ~~2007~~ 2008.

17           2. If, after the Committee submits the recommended Article, the  
18 Committee determines the Article needs additional revisions, the  
19 revisions shall be submitted as one final amendment. The  
20 recommended Article amendment shall be submitted to the Speaker of  
21 the House of Representatives and the President Pro Tempore of the  
22 Senate not later than March 1, ~~2008~~ 2009.

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

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

8           SECTION 6.           AMENDATORY           Section 12, Chapter 205, O.S.L.  
9 2006 (10 O.S. Supp. 2007, Section 7008-1.4), is amended to read as  
10 follows:

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

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

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

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

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

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

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

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

18 SECTION 7. AMENDATORY Section 13, Chapter 205, O.S.L.  
19 2006 (10 O.S. Supp. 2007, Section 7008-1.5), is amended to read as  
20 follows:

21 Section 7008-1.5 The Oklahoma Children and Juvenile Law Reform  
22 Committee shall provide a written progress report to the President

1 Pro Tempore of the Senate and the Speaker of the House of  
2 Representatives on or before ~~March~~ August 1, ~~2007~~ 2008.

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-25-08 - DO  
8 PASS, As Amended.