

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1642

By: Anderson

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,
8 Sections 7102, as last amended by Section 5, Chapter
9 351, O.S.L. 2007, and 7103 (10 O.S. Supp. 2007,
10 Section 7102), which relate to child abuse reporting;
11 modifying language; modifying definitions; expanding
12 list of persons who must make certain report; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7102, as
16 last amended by Section 5, Chapter 351, O.S.L. 2007 (10 O.S. Supp.
17 2007, Section 7102), is amended to read as follows:

18 Section 7102. A. 1. It is the policy of this state to provide
19 for the protection of children who have been abused or neglected and
20 who may be further threatened by the conduct of persons responsible
21 for the health, safety or welfare of such children.

22 2. It is the policy of this state that the best interests of
23 the child shall be of paramount consideration in responding to a
24 report of child abuse or neglect concerning:

a. ~~in~~ any necessary removal of a child from the home,

- 1 b. ~~in~~ placements of a child required pursuant to the
2 Oklahoma Child Abuse Reporting and Prevention Act, and
3 c. ~~in~~ any administrative or judicial proceeding held
4 pursuant to the provisions of the Oklahoma Child Abuse
5 Reporting and Prevention Act,

6 ~~the best interests of the child shall be of paramount consideration.~~

7 B. Except as otherwise provided by and used in the Oklahoma
8 Child Abuse Reporting and Prevention Act:

9 1. "Abuse" means harm or threatened harm to a child's health,
10 safety or welfare by a another person ~~responsible for the child's~~
11 ~~health, safety or welfare, including sexual abuse and sexual~~
12 ~~exploitation;~~

13 2. "Harm or threatened harm to a child's health or safety"
14 includes, but is not limited to:

- 15 a. nonaccidental physical or mental injury,
16 b. sexual abuse as defined in paragraph 6 of this
17 subsection,
18 c. sexual exploitation as defined in paragraph 7 of this
19 subsection,
20 d. neglect as defined by paragraph 3 of this subsection,
21 e. failure or omission to provide protection from harm or
22 threatened harm as defined herein, or the criminally
23 injurious conduct, as defined in paragraph 8 of this
24 subsection, by any person, or

1 f. abandonment;

2 3. "Neglect" means abandonment, or failure or omission by a
3 person responsible for the child's health, safety or welfare to
4 provide any of the following:

5 a. adequate food, clothing, shelter, medical care, or
6 supervision, or

7 b. special care made necessary by the physical or mental
8 condition of the child;

9 4. "Child" means any unmarried person under the age of eighteen
10 (18) years, except any person convicted of a crime specified in
11 Section 7306-1.1 of this title or any person who has been certified
12 as an adult pursuant to Section 7303-4.3 of this title and convicted
13 of a felony;

14 5. "Person responsible for a child's health, safety or welfare"
15 includes a parent; a legal guardian; a custodian; a foster parent; a
16 person eighteen (18) years of age or older with whom the child's
17 parent cohabitates or any other adult residing in the home of the
18 child; an agent or employee of a public or private residential home,
19 institution, facility or day treatment program as defined in Section
20 175.20 of this title; or an owner, operator, or employee of a child
21 care facility as defined by Section 402 of this title;

22 6. "Sexual abuse" includes but is not limited to, rape, sodomy,
23 incest and lewd or indecent acts or proposals made to a child, as
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1 defined by law, by a another person ~~responsible for the child's~~
2 ~~health, safety or welfare;~~

3 7. "Sexual exploitation" includes, but is not limited to,
4 allowing, permitting, or encouraging a child to engage in
5 prostitution, as defined by law, by a person responsible for the
6 child's health, safety or welfare or allowing, permitting,
7 encouraging, or engaging in the lewd, obscene, or pornographic
8 photographing, filming, or depicting of a child in those acts as
9 defined by the state law, by a person responsible for the child's
10 health, safety or welfare;

11 8. "Criminally injurious conduct" means the commission of a
12 misdemeanor or felony act which results in bodily injury, threat of
13 bodily injury, sexual abuse, or death to a victim which may be
14 punished by a fine, imprisonment or death, or, if committed by a
15 person less than eighteen (18) years of age, could result in such
16 person being adjudicated a delinquent child or certified as an adult
17 and convicted of a felony;

18 9. "Multidisciplinary child abuse team" means any freestanding
19 team established pursuant to the provisions of Section 7110 of this
20 title. For purposes of this definition, "freestanding" means a team
21 not used by a child advocacy center for its accreditation;

22 ~~9.~~ 10. "Child advocacy center" means a center and the
23 multidisciplinary child abuse team of which it is a member that is
24 accredited by the National Children's Alliance or that is completing

1 a sixth year of reaccreditation. Child advocacy centers shall be
2 classified, based on the child population of a district attorney's
3 district, as follows:

- 4 a. nonurban centers in districts with child populations
5 that are less than sixty thousand (60,000),
- 6 b. midlevel nonurban centers in districts with child
7 populations equal to or greater than sixty thousand
8 (60,000), but not including Oklahoma and Tulsa
9 Counties, and
- 10 c. urban centers in Oklahoma and Tulsa Counties.

11 ~~10.~~ 11. "Assessment" means a systematic process utilized by the
12 Department of Human Services to respond to reports of alleged child
13 abuse or neglect which, according to priority guidelines established
14 by the Department, do not constitute a serious and immediate threat
15 to the child's health, safety or welfare. The assessment includes,
16 but is not limited to, the following elements:

- 17 a. an evaluation of the child's safety, and
- 18 b. a determination regarding the family's need for
19 services;

20 ~~11.~~ 12. "Investigation" means an approach utilized by the
21 Department to respond to reports of alleged child abuse or neglect
22 which, according to priority guidelines established by the
23 Department, constitute a serious and immediate threat to the child's
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1 health or safety. An investigation includes, but is not limited to,
2 the following elements:

- 3 a. an evaluation of the child's safety or welfare,
- 4 b. a determination whether or not child abuse or neglect
5 occurred, and
- 6 c. a determination regarding the family's need for
7 prevention and intervention-related services;

8 ~~12.~~ 13. "Services not needed determination" means a report in
9 which a child protective services worker, after an investigation,
10 determines that there is no identified risk of abuse or neglect;

11 ~~13.~~ 14. "Services recommended determination" means a report in
12 which a child protective services worker, after an investigation,
13 determines the allegations to be unfounded or for which there is
14 insufficient evidence to fully determine whether child abuse or
15 neglect has occurred, but one in which the Department determines
16 that the child and the child's family could benefit from receiving
17 prevention and intervention-related services;

18 ~~14.~~ 15. "Confirmed report - services recommended" means a
19 report which is determined by a child protective services worker,
20 after an investigation and based upon some credible evidence, to
21 constitute child abuse or neglect which is of such a nature that the
22 Department recommends prevention and intervention-related services
23 for the parents or persons responsible for the care of the child or
24 children, but for which initial court intervention is not required;

1 ~~15.~~ 16. "Confirmed report - court intervention" means a report
2 which is determined by a child protective services worker, after an
3 investigation and based upon some credible evidence, to constitute
4 child abuse or neglect which is of such a nature that the Department
5 finds that the child's health, safety or welfare is threatened;

6 ~~16.~~ 17. "Child protective services worker" means a person
7 employed by the Department of Human Services with sufficient
8 experience or training as determined by the Department in child
9 abuse prevention and identification;

10 ~~17.~~ 18. "Department" means the Department of Human Services;

11 ~~18.~~ 19. "Commission" means the Commission for Human Services;
12 and

13 ~~19.~~ 20. "Prevention and intervention-related services" means
14 community-based programs that serve children and families on a
15 voluntary and time-limited basis to help reduce the likelihood or
16 incidence of child abuse and neglect.

17 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7103, is
18 amended to read as follows:

19 Section 7103. A. 1. Every person, including, but not limited
20 to, any:

21 a. physician or surgeon, including doctors of medicine
22 and dentistry, licensed osteopathic physicians,
23 residents and interns, examining, attending or
24 treating a child under the age of eighteen (18) years,

- 1 b. registered nurse examining, attending or treating such
2 a child in the absence of a physician or surgeon, or
3 c. teacher of any child under the age of eighteen (18)
4 years, and
5 d. person responsible for a child's health, safety and
6 welfare as defined by Section 7102 of this title, or
7 any other person

8 having reason to believe that a child under the age of eighteen (18)
9 years is a victim of abuse or neglect, shall report the matter
10 ~~promptly~~ to the Department of Human Services. Such reports may be
11 made by telephone, in writing, personally or by any other method
12 prescribed by the Department. Any report of abuse or neglect made
13 pursuant to this section shall be made in good faith.

14 2. Every physician or surgeon, including doctors of medicine,
15 licensed osteopathic physicians, residents and interns, or any other
16 health care professional attending the birth of a child who tests
17 positive for alcohol or a controlled dangerous substance shall
18 ~~promptly~~ report the matter to the Department of Human Services.

19 3. No privilege or contract shall relieve any person from the
20 requirement of reporting pursuant to this section.

21 4. The reporting obligations under this section are individual,
22 and no employer, supervisor or administrator shall impede or inhibit
23 the reporting obligations of any employee or other person. No
24 employer, supervisor or administrator of any employee or other

1 person required to provide information pursuant to this section
2 shall discharge, or in any manner discriminate or retaliate against,
3 the employee or other person who in good faith provides such child
4 abuse reports or information, testifies, or is about to testify in
5 any proceeding involving child abuse or neglect; provided, that the
6 person did not perpetrate or inflict such abuse or neglect. Any
7 employer, supervisor or administrator who discharges, discriminates
8 or retaliates against the employee or other person shall be liable
9 for damages, costs and attorney fees. Internal procedures to
10 facilitate child abuse or neglect reporting and inform employers,
11 supervisors and administrators of reported suspected child abuse or
12 neglect may be established provided that they are not inconsistent
13 with the provisions of this section and that such procedures shall
14 not relieve the employee or such other person from the individual
15 reporting obligations required by this section.

16 5. Every physician or surgeon making a report of abuse or
17 neglect as required by this subsection or examining a child to
18 determine the likelihood of abuse or neglect and every hospital or
19 related institution in which the child was examined or treated shall
20 provide copies of the results of the examination or copies of the
21 examination on which the report was based and any other clinical
22 notes, x-rays, photographs, and other previous or current records
23 relevant to the case to law enforcement officers conducting a
24 criminal investigation into the case and to employees of the

1 Department of Human Services conducting an investigation of alleged
2 abuse or neglect in the case.

3 B. If the report is not made in writing in the first instance,
4 it shall be reduced to writing by the Department of Human Services,
5 in accordance with rules promulgated by the Commission for Human
6 Services, as soon as may be after it is initially made by telephone
7 or otherwise and shall contain the following information:

8 1. The names and addresses of the child and the child's parents
9 or other persons responsible for the child's health, safety or
10 welfare;

11 2. The child's age;

12 3. The nature and extent of the abuse or neglect, including any
13 evidence of previous injuries;

14 4. If the child has tested positive for alcohol or a controlled
15 dangerous substance; and

16 5. Any other information that the maker of the report believes
17 might be helpful in establishing the cause of the injuries and the
18 identity of the person or persons responsible therefor if such
19 information or any part thereof is known to the person making the
20 report.

21 C. Any person who knowingly and willfully fails to promptly
22 report any incident as provided in this section may be reported by
23 the Department of Human Services to local law enforcement for
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1 criminal investigation and, upon conviction thereof, shall be guilty
2 of a misdemeanor.

3 D. 1. Any person who knowingly and willfully makes a false
4 report pursuant to the provisions of this section or a report that
5 the person knows lacks factual foundation may be reported by the
6 Department of Human Services to local law enforcement for criminal
7 investigation and, upon conviction thereof, shall be guilty of a
8 misdemeanor.

9 2. If a court determines that an accusation of child abuse or
10 neglect made during a child custody proceeding is false and the
11 person making the accusation knew it to be false at the time the
12 accusation was made, the court may impose a fine, not to exceed Five
13 Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred
14 in recovering the sanctions, against the person making the
15 accusation. The remedy provided by this paragraph is in addition to
16 paragraph 1 of this subsection or to any other remedy provided by
17 law.

18 E. 1. Nothing in this section shall be construed to mean a
19 child is abused or neglected for the sole reason the parent, legal
20 guardian or person having custody or control of a child, in good
21 faith, selects and depends upon spiritual means alone through
22 prayer, in accordance with the tenets and practice of a recognized
23 church or religious denomination, for the treatment or cure of
24 disease or remedial care of such child.

1 2. Nothing contained in this subsection shall prevent a court
2 from immediately assuming custody of a child, pursuant to the
3 Oklahoma Children's Code, and ordering whatever action may be
4 necessary, including medical treatment, to protect the child's
5 health or welfare.

6 F. Nothing contained in this section shall be construed to
7 exempt or prohibit any person from reporting any suspected child
8 abuse or neglect pursuant to subsection A of this section.

9 SECTION 3. This act shall become effective November 1, 2008.

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