

ENROLLED SENATE
BILL NO. 1830

By: Crain, of the Senate

and

Nelson, Kern and Tibbs of
the House

An Act relating to children and juveniles; amending 10 O.S. 2001, Sections 7003-1.1, as renumbered by Section 213, Chapter 233, O.S.L. 2009, and as last amended by Section 4, Chapter 338, O.S.L. 2009, 7004-3.4, as last amended by Section 69, Chapter 233, O.S.L. 2009, and as renumbered by Section 304, Chapter 233, O.S.L. 2009 and 7302-3.2, as amended by Section 8, Chapter 234, O.S.L. 2009, and as renumbered by Section 171, Chapter 234, O.S.L. 2009 (10A O.S. Supp. 2009, Sections 1-2-102, 1-9-112 and 2-7-302), which relate to the safety of children; requiring certain referral; providing for certain exemption; requiring certain investigation; modifying duties of certain Advocate General; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-1.1, as renumbered by Section 213, Chapter 233, O.S.L. 2009, and as last amended by Section 4, Chapter 338, O.S.L. 2009 (10A O.S. Supp. 2009, Section 1-2-102), is amended to read as follows:

Section 1-2-102. A. 1. Upon receipt of a report that a child may be abused or neglected, the Department of Human Services shall conduct a safety analysis.

2. The Department shall forward a report of its assessment or investigation and findings to any district attorney's office which may have jurisdiction to file a petition pursuant to Section 1-4-902 of this title.

B. 1. If, upon receipt of a report alleging abuse or neglect or during the assessment or investigation, the Department determines that:

- a. the alleged perpetrator is someone other than a person responsible for the child's health, safety, or welfare, and
- b. the alleged abuse or neglect of the child does not appear to be attributable to failure on the part of a person responsible for the child's health, safety, or welfare to provide protection for the child,

the Department shall immediately make a referral, either verbally or in writing, to the appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation.

2. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation unless:

- a. the Department has reason to believe the alleged perpetrator is a parent of another child, not the subject of the criminal investigation, or is otherwise a person responsible for the health, safety, or welfare of another child,
- b. notice is received from a law enforcement agency that it has determined the alleged perpetrator is a parent of or a person responsible for the health, safety, or welfare of another child not the subject of the criminal investigation, or
- c. the appropriate law enforcement agency requests the Department, in writing, to participate in the investigation. If funds and personnel are available,

as determined by the Director of the Department or a designee, the Department may assist law enforcement in interviewing children alleged to be victims of physical or sexual abuse.

3. If, upon receipt of a report alleging abuse or neglect or during the assessment or investigation, the Department determines that the alleged abuse or neglect of the child involves a child in the custody of the Office of Juvenile Affairs and such child was placed in an Office of Juvenile Affairs secure juvenile facility at the time of the alleged abuse or neglect, the Department shall immediately make a referral, either verbally or in writing, to the appropriate law enforcement agency for the purpose of conducting a possible criminal investigation. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation.

C. 1. Any law enforcement agency receiving a referral as provided in this section shall provide the Department with a copy of the report of any investigation resulting from a referral from the Department.

2. Whenever, in the course of any criminal investigation, a law enforcement agency determines that there is cause to believe that a child, other than a child in the custody of the Office of Juvenile Affairs and placed in an Office of Juvenile Affairs secure juvenile facility, may be abused or neglected by reason of the acts, omissions, or failures on the part of a person responsible for the health, safety, or welfare of the child, the law enforcement agency shall immediately contact the Department for the purpose of an investigation.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7004-3.4, as last amended by Section 69, Chapter 233, O.S.L. 2009, and as renumbered by Section 304, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2009, Section 1-9-112), is amended to read as follows:

Section 1-9-112. A. 1. The Commission for Human Services is authorized and directed to establish the Office of Client Advocacy within the Department of Human Services and to employ personnel necessary to carry out the purposes of this section and the duties listed in this section. Personnel may be dismissed only for cause.

2. The chief administrative officer of the Office of Client Advocacy shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel Administration classification and compensation plan, but shall be an unclassified position.

3. The duties and responsibilities of the Advocate General are to:

- a. supervise personnel assigned to the Office of Client Advocacy,
- b. monitor and review grievance procedures and hearings,
- c. establish and maintain a fair, simple, and expeditious system for resolution of grievances of:
 - (1) all children in the custody of the Department of Human Services regarding:
 - (a) the substance or application of any written or unwritten policy or rule of the Department or agent of the Department, or
 - (b) any decision or action by an employee or agent of the Department, or of any child in the custody of the Department,
 - (2) foster parents relating to the provision of foster care services pursuant to this section and Section 1-9-117 of this title, and
 - (3) all persons receiving services from the Developmental Disabilities Services Division of the Department of Human Services,

- d. investigate allegations of abuse, neglect, sexual abuse, and sexual exploitation, as those terms are defined in the Oklahoma Children's Code, by a person responsible for a child, regardless of custody:
 - (1) residing outside their own homes other than children in foster care or children in the custody of the Office of Juvenile Affairs and placed in an Office of Juvenile Affairs secure facility,
 - (2) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, and submit a report of the results of the investigation to the appropriate district attorney and to the State Department of Health,
 - (3) receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, and
 - (4) residing in a state institution listed in Section 1406 of Title 10 of the Oklahoma Statutes,
- e. establish a system for investigating allegations of misconduct, by a person responsible for a child, not rising to the level of abuse, neglect, sexual abuse, or sexual exploitation with regard to any child or resident listed in subparagraph d of this paragraph,
- f. coordinate any hearings or meetings of Departmental administrative review committees conducted as a result of unresolved grievances or as a result of investigations,
- g. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Commission, the Office of Juvenile System Oversight and other appropriate persons as necessary,

- h. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of any grievance which is not resolved in the favor of the complainant,
- i. perform such other duties as required by the Director of the Department or the Commission, and
- j. develop policies and procedures as necessary to implement the duties and responsibilities assigned to the Office of Client Advocacy.

B. The Office of Client Advocacy shall make a complete written report of their investigations. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

C. 1. Except as otherwise provided by the Oklahoma Children's Code, the reports required by Section 1-2-101 of this title or any other information acquired pursuant to the Oklahoma Children's Code shall be confidential and may be disclosed only as provided in Section 1-2-108 of this title and the Oklahoma Children's Code.

2. Except as otherwise provided by the Oklahoma Children's Code, any violation of the confidentiality requirements of the Oklahoma Children's Code shall, upon conviction, be a misdemeanor punishable by up to six (6) months in jail, by a fine of Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

3. Any records or information disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purpose for which disclosure is authorized. Rules promulgated by the Commission for Human Services shall provide for disclosure of relevant information concerning Office of Client Advocacy investigations to persons or entities acting in an official capacity with regard to the subject of the investigation.

4. Nothing in this section shall be construed as prohibiting the Office of Client Advocacy or the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment, or protection of a child alleged to be abused or neglected.

D. 1. The Office of Client Advocacy shall investigate any complaint alleging that an employee of the Department or a child-placing agency has threatened a foster parent with removal of a child from the foster parent, harassed a foster parent, or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who has:

- a. filed a grievance pursuant to Section 1-9-120 of this title,
- b. provided information to any state official or Department employee, or
- c. testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against the Department or child-placing agency.

2. The provisions of this subsection shall not apply to any complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation of any law, rule, or contract provision by that foster parent, or the action taken by the Department or a child-placement agency in conformity with the result of any such proceeding.

3. The Office of Client Advocacy shall at all times be granted access to any foster home or any child-placing agency which is certified, authorized, or funded by the Department.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7302-3.2, as amended by Section 8, Chapter 234, O.S.L. 2009, and as renumbered by Section 171, Chapter 234, O.S.L. 2009 (10A O.S. Supp. 2009, Section 2-7-302), is amended to read as follows:

Section 2-7-302. A. There is hereby established within the Office of Juvenile Affairs the Division of Advocate Defender which will be separate and apart from the Office of General Counsel. The administrative officer of the Division of Advocate Defender shall be the Advocate General, who shall be an attorney with a minimum of three (3) years of experience as an attorney. The Executive Director of the Office of Juvenile Affairs shall employ such other

personnel as may be necessary to carry out the purposes of this section. Such personnel may be dismissed only for cause.

B. The duties and responsibilities of the Advocate General are as follows:

1. Supervise personnel assigned to children's institutions and facilities as student defender/representatives;

2. Monitor and review grievance procedures and hearings;

3. Investigate grievances of juveniles and staff grievances related to juveniles which are not resolved at the facility level;

4. Report In cooperation with the Executive Director, establish a system for investigating allegations of misconduct by a person responsible for a child with regard to any child in the custody of the Office of Juvenile Affairs and placed in an Office of Juvenile Affairs secure juvenile facility;

5. Monitor the system to ensure the appropriate reporting to the Department of Human Services of allegations of abuse or neglect of juveniles who are in the custody of the Office of Juvenile Affairs and placed in private facilities or facilities operated by the Office of Juvenile Affairs; or

~~5.~~ 6. Coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations;

~~6.~~ 7. Make recommendations to the Executive Director of the Office of Juvenile Affairs, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Executive Director of the Office of Juvenile Affairs, the Office of Juvenile System Oversight and other appropriate persons as necessary;

~~7.~~ 8. Forward to the Office of Juvenile Systems Oversight, for the information of the Executive Director of the Office of Juvenile Systems Oversight, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances

established by the Office of Juvenile Affairs, in the favor of the complainant; and

~~8.~~ 9. Perform such other duties as required by the Executive Director of the Office of Juvenile Affairs.

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

Passed the Senate the 3rd day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 1st day of April 2010.

Presiding Officer of the House
of Representatives