

BILL SUMMARY

MEASURE: Introduced HB 2028

AUTHOR: Representative Steele

SUBJECT: Children's Code

Oklahoma Children and Juvenile Law Reform Committee commentary is shown in italics. Staff comments in parentheses indicate that a provision has been relocated to or from another section.

PROVISIONS: **Section 1.** Amendatory. Deletes obsolete language regarding support of stepchildren.

Section 2. Amendatory. Provides conditions under which custody of a child is to be awarded to a parent unless a nonparent proves certain circumstances. Prohibits incidental or token financial contributions from satisfying child support obligations. Outlines the conditions under which a custody determination can be modified.

Section 3. Amendatory. Clarifies language regarding grandparents or other relatives providing foster care.

Section 4. Amendatory. Clarifies language in the "Investing in Stronger Oklahoma Families Act."

Section 5. Amendatory. Clarifies language regarding the appointment of counsel.

Section 6. Amendatory. Deletes certain responsibility of the Indigent Defense System. *The Indigent Defense System has likely completed its work on the deprived cases in which it was appointed 12 years ago.*

Section 7. Amendatory. Clarifies language regarding authorization to consent to medical or dental care.

Section 8. Amendatory. Clarifies language regarding education and training requirements for judges and other personnel who have juvenile docket responsibility. Deletes training requirements for Court Appointed Special Advocates (CASA.) Provides that each judicial district will be responsible for developing procedures and rules for the training courses.

Section 9. Amendatory. Modifies statutory references to the Oklahoma Children's Code.

Section 10. Amendatory. Modifies legislative intent of the Children’s Code. *Re-written to be consistent with the federal and state constitutions, statutes and case law.*

Section 11. Amendatory. Modifies definitions. Clarifies the meaning of “abuse,” “sexual abuse” and “sexual exploitation.” Adds definitions of “heinous and shocking” abuse and neglect. *Used in the termination of parental rights statutes.* Expands the definition of “neglect.”

Section 12. Amendatory. Clarifies language regarding a court’s authority to assume jurisdiction over a child in certain circumstances and to take certain action in an emergency regardless of whether another district court has prior or current jurisdiction and providing that a judge presiding over a deprived action has authority to make a final determination in that case and preside over any separate action necessary to finalize a permanency plan for the child. Providing for venue of a deprived action and specifies conditions for determining residence of the child and for transfer of venue.

Section 13. Amendatory. Clarifies that any court presiding over any proceeding may refer allegations of child abuse or neglect to DHS.

Section 14. Amendatory. Clarifies language related to DHS responsibilities for children in the department’s custody.

Section 15. Amendatory. Specifies circumstances in which a guardian ad litem is appointed.

Section 16. Amendatory. Deletes the authority of certain persons to bring a civil action related to the provisions of the Oklahoma Children’s Code.

Section 17. Amendatory. Modifies the conditions under which DHS is responsible for further investigation after making a referral to law enforcement and deletes the requirement that law enforcement provide to the department a written statement explaining why a criminal investigation was not conducted.

Section 18. Amendatory. Specifies standards for a child being taken into protective custody by law enforcement without a court order. Allows the department to take a child into emergency custody when the child is located in a hospital. Requires the court to make certain determinations in an emergency custody order. Deletes requirement for development of a placement protocol for at risk infants *DHS and the Court can determine emergency placement issues based on resources in each county.* Provides immunity from liability for certain persons who transport a child. Allows a parent who is arrested on a charge other than child abuse or neglect may

designate another person to take custody of the child. *Prevents the child from going to a foster placement or shelter.*

Section 19. Amendatory. Authorizes the department to provide written notice to the parent or guardian of the emergency custody of the child. Deletes requirements for an emergency custody hearing. (Provisions relocated in Section 116.)

Section 20. Amendatory. Clarifies language regarding immunity from liability regarding medical or behavioral health treatment of a child and provides certain immunity for physicians and other health care providers.

Section 21. Amendatory. Specifies that the type of relief requested be included in the petition that alleges a child is deprived. Deleting references to a petition for termination of parental rights. *Termination of parental rights is addressed in separate sections.*

Section 22. Amendatory. Provides a framework within which amendments may be made to a deprived petition. Provides for the filing of a postadjudication petition upon new evidence being discovered and specifies that all procedures and hearings required for the original petition apply to the postadjudication petition.

Section 23. Amendatory. Provides procedures for issuing a summons following the filing of a deprived petition and specifies who may be summoned to court. Deletes reference to the authority of the court to assume immediate custody of an allegedly deprived child. (Provisions regarding taking children into custody are in Sec. 18.)

Section 24. Amendatory. Clarifies procedures for the serving of a summons and provides that the state conduct a search to locate and notify parents and legal guardians of the hearing. *Effort made to notify the noncustodial parent.* Providing procedures for service of a summons by publication and clarifies responsibility for the costs of publication.

Section 25. Amendatory. Clarifies language regarding a person who has been summoned failing to respond or appear.

Section 26. Amendatory. Provides that the court may appoint counsel at the emergency custody hearing and clarifies that only a parent or legal guardian is entitled to court appointed counsel once a petition is filed. Allows the court to appoint either an attorney or a guardian ad litem for the child when the emergency custody hearing is held. Requires that the attorney appointed for the child be independent of any other party. Requires the court to ensure that the caseload of the court-appointed counsel for a parent or a child be consistent with certain caseload standards. Deletes reference to the attorney's

access to information relevant to the case. *Records statutes already provide for attorney access.* Authorizes the court to provide reimbursement for mileage for the child's court-appointed attorney in certain situations. Deleting requirement that a Court Appointed Special Advocate program be made available in each judicial district. *The requirement encroached on judicial discretion and cannot be enforced.* Deletes training and criminal background check requirements for CASA's .

Section 27. Amendatory. Clarifies that a parent or a child has the right to request a bench trial in a deprived action.

Section 28. Amendatory. Authorizes any hearing held pursuant to the Oklahoma Children's Code to be conducted by teleconference.

Section 29. Amendatory. Modifies procedures regarding the recording and admittance of an oral statement of a child. *Language added to be consistent with the evidence code 12 O.S. § 2803.1* Allows an attorney to observe, without the child's awareness, the statement being made.

Section 30. Amendatory. Clarifies procedures for taking the testimony of a child in a room other than the courtroom and allows time for consultation between the attorney and client prior to the conclusion of the testimony.

Section 31. Amendatory. Specifies the burden of proof for adjudications is by a preponderance of the evidence.

Section 32. Amendatory. Requires the parent of a child who has been adjudicated deprived to register current and any change of address with the court clerk.

Section 33. Amendatory. Modifies circumstances in which reasonable efforts are not required to prevent removal of the child from the home or to reunify the child and parents. *Includes only aggravated circumstances provided for in the federal Adoption and Safe Families Act and the Child Abuse Prevention and Treatment Act.*

Section 34. Amendatory. Deletes procedures related to filing for termination of parental rights for children in the custody of OJA. Provides additional compelling reasons for determining that filing a petition to terminate parental rights would not serve the best interest of the child.

Section 35. Grammatical clean up.

Section 36. Amendatory. Deletes language regarding a child in need of medical care. (Moved to Sec. 115.)

Section 37. Amendatory. Modifies the procedures for and the parties to be involved in the development of the child's individualized service plan (ISP) and provides that the court may hold an evidentiary hearing if any part of the plan is disputed. Modifies the contents of the ISP for children remaining in the home and for those placed outside the home. Deletes procedures related to the ISP of a child who at birth tested positive for drugs or alcohol. (*Such services, if needed, will still be a part of the ISP.*)

Section 38. Amendatory. Deleting provisions regarding certain information about a child in custody that must be provided by the department to placement providers and foster parents. *Requirements addressed in agency policy.* Deletes provisions regarding health exams of a child and the department's ability to give consent for such tests. (Provisions moved to Sec. 115.) Deletes obsolete language related to children in custody who become unmanageable. *Does not apply to current Children's Code provisions.*

Section 39. Amendatory. Modifies parties to be notified when a child in custody is moved to a new location and time frame for such notice unless an emergency exists. Deletes requirement for court approval to move a child in certain circumstances.

Section 40. Amendatory. Requires a showing of good cause before delaying a dispositional hearing and specifies procedures for such hearings. Deletes provisions regarding types of dispositional orders and certain juvenile court procedures. (Some provisions moved to Sections 124-125.)

Section 41. Amendatory. Modifies procedures for trial home reunification to clarify the department's authority and responsibilities during the reunification period. Requires the court to conduct a hearing after it receives notice that the department terminated a trial reunification to determine if the child remaining in the home is contrary to the child's welfare and whether reasonable efforts were made to prevent the removal of the child from the trial reunification. *Federal requirement.*

Section 42. Amendatory. Modifies procedures for court review of the case of an alleged or adjudicated deprived child and modifies the content of court orders and findings resulting from the review.

Section 43. Amendatory. Adds to the required elements of a report prepared by the department for the review hearing.

Section 44. Amendatory. Deletes obsolete language regarding supported guardianship program. *Department did not get the federal waiver.*

Section 45. Amendatory. Clarifies procedures for and types of information that can be presented at a permanency hearing and provides that a transcript of the hearing be made. Modifies certain findings to be made by the court.

Section 46. Amendatory. Provides that the court may require a meeting prior to a permanency hearing and what parties may participate. Clarifies the content and distribution of the permanency report.

Section 47. Amendatory. Modifies procedures related to written agreements between the petitioners for adoption and the birth relatives of the child and specifies steps to be taken to preserve sibling contact. Modifies court proceedings related to postadoption agreements.

Section 48. Amendatory. Adds factors for the court to consider regarding the adoption of the child by a foster parent.

Section 49. Amendatory. Grammatical clean-up.

Section 50. Amendatory. Deletes certain provisions regarding ability of the district attorney or the attorney for the child to object to an order of the court releasing a child from state custody. (Provisions moved to section 129.)

Section 51. Amendatory. Updates language related to hearings to determine the release of a child from state custody.

Section 52. Amendatory. Clarifies that in all appeals under Title 10 the child's initials will be used instead of the child's name.

Section 53. Amendatory. Provides that appeals involving a deprived child be decided on a priority basis.

Section 54. Amendatory. Clarifies the rights and duties of persons or agencies, other than DHS, receiving custody of a child.

Section 55. Amendatory. Deletes certain requirement for concurrent permanency planning. *Requirements for concurrent planning are in Sec. 40 and were modified to be consistent with federal guidelines.*

Section 56. Amendatory. Clarifies language regarding reimbursement for mileage and witness fees.

Section 57. Amendatory. Grammatical clean-up related to penalties for violation of a court order.

Section 58. Amendatory. Clarifies that the district attorney shall prosecute all aspects of a case within the purview of the Children's Code. Provides that

the court may appoint a special prosecutor and bill the district attorney's office if the DA does not perform its duties.

Section 59. Amendatory. Updates language regarding the court assuming custody of a child.

Section 60. Amendatory. Modifies certain population count for the appointment of referees in juvenile cases and provides for reasonable compensation and clarifies duties of and procedures for referees assigned to the juvenile court. Provides procedure for parties to object to a referee's recommendation.

Section 61. Amendatory. Updates language regarding the reimbursement of costs for the care of a deprived child to the department. Deletes requirement that payment be collected by the court clerk.

Section 62. Amendatory. Specifies that the Child Support Enforcement Division enforce all child support orders related to a deprived child.

Section 63. Amendatory. Clarifies additional duties and powers of the department as they relate to children in custody.

Section 64. Amendatory. Updates language regarding the department's responsibilities for program planning and monitoring.

Section 65. Amendatory. Updates language regarding the Kinship Foster Care Program.

Section 66. Amendatory. Updates language regarding the purpose of the Independent Living Act.

Section 67. Amendatory. Updates language regarding the pilot program to serve child at high risk of abuse and neglect.

Section 68. Amendatory. Updates language regarding the performance-based incentive compensation program for child welfare specialists.

Section 69. Amendatory. Updates language regarding community-based services for deprived children.

Section 70. Amendatory. Updates language regarding the administration of children's shelters and group homes.

Section 71. Amendatory. Updates language regarding the department's policies and procedures for the treatment of children in custody. Provides that children have the right to communicate with family and others in the

community if in the child's best interest and that the child has a right to access the child's attorney. Specifies conditions for the use of physical force. (Existing law.)

Section 72. Amendatory. Updates language regarding the Office of Client Advocacy.

Section 73. Amendatory. Updates language regarding youth service shelters for minor mothers who are the victim of domestic abuse.

Section 74. Amendatory. Updates language regarding court records and clarifies the definition of a "social record."

Section 75. Amendatory. Provides a process for the production of safety-analysis records in a proceeding where child custody or visitation is at issue. Provides a process for judicial review and procedures for treatment of certain confidential records and allows search and copy fees to be charged to the person requesting the records.

Section 76. Amendatory. Consolidates and clarifies the disclosure of juvenile court records and DHS agency records without a court order and provides a procedure for disclosing juvenile court records where more than one child is included in the record.

Section 77. Amendatory. Clarifies language regarding the Oklahoma Minor Identification Act.

Section 78. Amendatory. Grammatical clean-up of language regarding the maintenance of court and agency records.

Section 79. Amendatory. Clarifies language regarding the disclosure of information in cases of death or near-death of a child.

Section 80. Amendatory. Clarifies the conditions under which a court may terminate parental rights.

Section 81. Amendatory. Modifies content and procedures for the notice of hearing to terminate parental rights.

Section 82. Amendatory. Clarifies language regarding the effect of termination of parental rights.

Section 83. Amendatory. Clarifies language regarding the responsibility of individuals to report suspected child abuse or neglect. Deletes language regarding responsibility of physicians who report abuse or neglect to provide copies of the examination. (Language moved to Sec.87.) Deletes

information to be collected in a report of alleged abuse or neglect. *KIDS system set up to collect this information.* Deletes language which provides that parents who rely upon spiritual means for healing of a child are not construed to be committing abuse or neglect. *Deleted to remove any doubt regarding the obligation of every person to report child abuse and neglect.*

Section 84. Amendatory. Clarifies that any law enforcement agency may be asked by the court to investigate certain abuse of a child.

Section 85. Amendatory. Clarifies language regarding immunity from civil and criminal liability for reporting abuse or neglect.

Section 86. Amendatory. Deletes language regarding conducting investigations or assessments on a priority basis. (Addressed in Sec. 87.)

Section 87. Amendatory. Deletes requirement for the department to designate staff that conduct assessments in response to a report of abuse or neglect that do not require an investigation. Deletes language regarding elements of an investigation. *Agency policy.* Deletes redundant language regarding the department's ability to obtain certain medical records of a child. Clarifies language regarding behavioral health records. Clarifies language regarding voluntary services.

Section 88. Amendatory. Provides certain requirements related to the disclosure of confidential records.

Section 89. Amendatory. Clarifies language regarding the notice to person being investigated in response to a report of abuse or neglect. Requires a statement that failure to appear for court proceedings may result in termination of parental rights.

Section 90. Amendatory. Deletes language regarding transmission of DHS records. (Moved to Sec. 75.)

Section 91. Amendatory. Clarifies language regarding multidisciplinary child abuse teams.

Section 92. Amendatory. Updates statutory cite related to the Child Abuse Multidisciplinary Account (CAMA.)

Section 93. Amendatory. Clarifies provisions regarding the CAMA.

Section 94. Amendatory. Updates provisions regarding the department's information system for maintaining reports of abuse and neglect.

Section 95. Amendatory. Updates statutory cite regarding admissibility of evidence.

Section 96. Amendatory. Provides that a parent may relinquish an infant (defined as a child 12 months or younger) without fear of prosecution. *Statute should not be limited to a child who is seven days old or younger. How is a determination of age made?*

Section 97. Amendatory. Deletes and clarifies certain legislative intent language related to children in foster care.

Section 98. Amendatory. Deletes provisions related to the establishment of a foster care program. (Foster care provisions are in Sections 101 and 102.)

Section 99. Amendatory. Modifies provisions regarding foster parent allegations against DHS or child-placing agency employees.

Section 100. Amendatory. Clarifies provisions limiting placement of children with licensed foster parents.

Section 101. Amendatory. Clarifies language related to the written contract between DHS and a foster parent and information to be provided to the foster parent.

Section 102. Amendatory. Clarifies language and updates statutory cites regarding the statement of foster parent's rights.

Section 103. Amendatory. Clarifies language regarding the determination of placement of a child in foster care. Deletes obsolete language regarding placements for delinquent children.

Section 104. Amendatory. Provides that a foster parent or other party may give an opinion to the court regarding support for or opposition to a planned change in a child's placement and provides that the court may hold an informal placement review hearing to resolve concerns raised. Adds two circumstances that qualify as grounds for emergency removal of a child from a foster home.

Section 105. Amendatory. Clarifies provisions regarding the foster parent eligibility assessment and deletes certain provisions.

Section 106. Amendatory. Clarifies language regarding the recruitment of foster parents from relatives and kin of a child.

Section 107. Amendatory. Clarifies language regarding foster parent associations.

Section 108. Amendatory. Clarifies language regarding foster care education and training programs. Deletes requirements for training in behavioral management techniques. *Not relevant for all foster parents. DHS policy can address this issue.*

Section 109. Amendatory. Clarifies language regarding grievance procedures for foster parents.

Section 110. Amendatory. Clarifies language regarding voluntary foster care placement.

Section 111. Amendatory. Updates statutory cites regarding abandonment of a child in foster care.

Section 112. Amendatory. Clarifies language regarding grandparents providing primary care for grandchildren.

Section 113. Amendatory. Requires the department or child-placing agency to visit a foster child at least one time per month. *Existing law.*

Section 114. New Law. Requires an assessment of a child placed voluntarily in foster care and the establishment of an individual treatment plan. *Replaces existing language.*

Section 115. New Law. Provides procedures for medical care of a child in custody. *Replaces multiple sections dealing with medical issues.* Prohibits the department from consenting to a child's abortion, sterilization or termination of life support.

Section 116. New Law. Provides procedures for an emergency custody hearing. (Existing law.) Provides that there must be a reasonable suspicion that a child is in need of immediate protection. Requires the creation of an affidavit form that notifies the parent that failure to identify a parent or relative of the child in a timely manner may result in the child being permanently placed outside the home. Requires such form to be filed with the court clerk within five days of the hearing and that a copy be provided to the department. *Allows courts and DHS to ascertain the status of the other parent or relative more quickly.*

Section 117. New Law. Provides procedures for relative and kinship preferences to be followed by the court when determining a child's placement.

Section 118. New Law. Requires the district attorney to maintain records concerning a child who is released from protective custody prior to an

emergency custody hearing. (Existing law.) Modifies time frames for the filing of a deprived child petition and issuance of a summons. *Allows additional time for better investigations and identification of alternatives to filing of the petition.*

Section 119. New Law. Authorizes the court to issue a restraining order against the alleged perpetrator of the abuse from having contact with the child and requiring the alleged perpetrator to move from the household in which the child resides.

Section 120. New Law. Excepts certain provisions of the Oklahoma Discovery Code and the Rules for District Courts of Oklahoma from juvenile proceedings.

Section 121. New Law. Provides that, at any stage of the proceedings, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in such a proceeding.

Section 122. New Law. Establishes procedures for use immunity of a parent or legal guardian for in-court testimony. *Immunity provisions may result in the parent engaging in treatment more readily which could result in permanency more quickly for the child.*

Section 123. New Law. Provides procedures and time frames for adjudication hearings following the filing of a deprived petition.

Section 124. New Law. Outlines the types of dispositional orders that may be made in response to a deprived child proceeding. Outlines factors for the court to consider in placing the child with a relative other than a parent and requires the court to state for the record the reasons that placement with a relative was denied. (Existing law.)

Section 125. New Law. Provides that the court may order treatment for a child and the child's parents in cases where a child has been adjudicated deprived due to educational neglect. (Existing law.)

Section 126. New Law. Provides for the establishment of permanent guardianship of a child.

Section 127. New Law. Establishes procedures for the establishment of permanent guardianships.

Section 128. New Law. Provides procedures for modifying or terminating a permanent guardianship. Requires a finding by the court that the child continuing to live in the guardian's home is contrary to the welfare of child. *Federal IV-E findings must be made for removal.*

Section 129. New Law. Establishes procedures for the district attorney or child's attorney to object to the release of the child from state custody. (Existing law.)

Section 130. New Law. Provides that the court may place a child in the legal custody of the department. (Existing law.)

Section 131. New Law. Authorizing the court to require DHS to show cause why a petition to terminate parental rights should not be filed when the permanency plan for the child should be adoption.

Section 132. New Law. Authorizes an individual or agency who has custody of a child to consent to the child's adoption if the court has terminated the rights of a parent. (Existing law.)

Section 133. New Law. Directs the court to set a permanency hearing within 30 days when parental rights are not terminated at trial and provides that the court may have continuing jurisdiction over the child.

Section 134. New Law. Provides a process for a child to request the court to reinstate the previously terminated parental rights of the child's parent.

Section 135. New Law. Prohibits social records from being filed in the court record unless so ordered by the court and restricts access to social records if they are filed in the court record.

Section 136. New Law. Provides that siblings in foster care should be placed in the same home or provisions made for continued contact. (Existing law.)

Section 137. New Law. Provides that DHS and OJA are responsible for the costs associated with the foster parent eligibility assessment, criminal history records checks and certain other expenses only for children in the custody of the state. (Existing law.)

Section 138. New Law. Authorizes the court to order the county sheriff to provide transportation to a child who is the subject of a deprived proceeding and provides for reimbursement.

Section 139. New Law. Authorizes the court to order the district attorney's office to pay the attorney fees for the child's attorney under certain circumstances.

Section 140. Repeals provisions related to a custodial parent's responsibility to support and educate a child.

Section 141. Repeals provisions related to the custody of a child after the death of a custodial parent.

Section 142. Repeals provisions related to the custody of a child born out of wedlock.

Section 143. Repeals provisions related to the prohibition of the use of certain words to describe a child born out of wedlock.

Section 144. Repeals provisions related to making an allowance to a parent from property of the child.

Section 145. Repeals provision related to a parent's control over property of the child.

Section 146. Repeals provisions related to bringing a civil action for abuse of parental authority.

Section 147. Repeals provisions regarding the cessation of a parent's authority.

Section 148. Repeals provisions regarding the support of a child in the event of a parent's death.

Section 149. Repeals provisions regarding the responsibility of parents to support a child who cannot support himself.

Section 150. Repeals provisions regarding compensation for another person's support of a child.

Section 151. Repeals provisions regarding parental support of a child who has attained majority.

Section 152. Repeals provisions regarding relinquishment of rights by a parent.

Section 153. Repeals provisions regarding the payment of wages to a minor.

Sections 154-159 Repeals provisions related to the permanent care and custody of a child.

Section 160. Repeals provisions regarding the construction and operation of certain buildings.

Section 161. Repeals the authority of a judge in a deprived action having jurisdiction over any separate action necessary to finalize a child's permanency plan. (Provision included in Sec. 12.)

Section 162. Repeals provisions related to an application for an emergency ex parte order for emergency medical or mental health treatment of child taken into protective custody.

Section 163. Repeals provisions related to parties that can consent to medical or mental health treatment of a child in custody.

Section 164. Repeals provisions regarding a child in custody who becomes unmanageable and uncontrollable.

Section 165. Repeals provisions related to procedures to ensure that a child in custody has access to appropriate mental health services.

Sections 166-167. Repeals provisions related to the disclosure of DHS records without a court order.

Section 168. Repeals provisions related to the federal Child Abuse Prevention and Treatment Act.

Section 169. Repeals provisions related to custody of a child with authority to consent to adoption after termination of parental rights.

Section 170. Repeals provisions prohibiting an action to adopt a child being combined with an action to terminate parental rights.

Section 171. Repeals provisions related to the filing of a petition to terminate parental rights of children in the custody of the department for 15 out of the last 22 months.

Sections 172-174. Repeals provisions related to the Child Abuse Reporting and Prevention Act.

Sections 175-290. Recodification

Section 291. Effective date: November 1, 2009

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