STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3133 By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2011, Section 601.3, which relates to the powers and duties of the Oklahoma Commission on Children and Youth; directing Commission to employ administrative law judges to preside over certain Department of Human Services Office of Client Advocacy administrative hearings; requiring transfer of certain Department of Human Services administrative law judges to the Commission; amending 10A O.S. 2011, Section 1-9-112, which relates to Department of Human Services Office of Client Advocacy duties; transferring certain administrative law judges to the Oklahoma Commission on Children and Youth; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2011, Section 601.3, is amended to read as follows:

Section 601.3 The Oklahoma Commission on Children and Youth is hereby authorized and directed to:

1. Establish and maintain the Office of Planning and Coordination for Services to Children and Youth;

2. Establish and maintain the Office of Juvenile System Oversight;

3. Designate community partnership districts for services to children and youth and, within the limitations of available funds, whether appropriated or otherwise available, provide staff, technical assistance and other assistance as necessary and appropriate to the district boards; ~~and~~

4. Establish a system of certification in accordance with the Child Care Facilities Licensing Act for the shelters managed and operated by the Department of Human Services pursuant to Section 7004-3.1 of this title; and

5. Effective November 1, 2012, employ administrative law judges whose primary area of responsibility shall be to preside over administrative hearings of the Department of Human Services Office of Client Advocacy concerning child welfare and foster care complaints or allegations. Any administrative law judge employed by the Department on November 1, 2012, shall be transferred to the Commission and shall retain all benefits, accrued leave and salary.

SECTION 2. AMENDATORY 10A O.S. 2011, 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. Effective November 1, 2012, any administrative law judge employed by the Department for the purpose of presiding over Office of Client Advocacy administrative hearings concerning child welfare and foster care complaints or allegations shall be transferred to the Oklahoma Commission on Children and Youth and shall be employees of the Commission as provided in Section 601.3 of Title 10 of the Oklahoma Statutes.

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. This act shall become effective November 1, 2012.

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