

An Act

ENROLLED HOUSE
BILL NO. 2136

By: Steele, Billy, Roan,
Dorman, Walker, Virgin,
Stiles and Brumbaugh of the
House

and

Newberry and Allen of the
Senate

An Act relating to the Children and Juvenile Code; amending 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 1 of Enrolled Senate Bill No. 553 of the 1st Session of the 53rd Oklahoma Legislature, which relates to preliminary investigation procedures; directing Department of Human Services to conduct investigations instead of assessments in certain circumstances; specifying requirements; amending 10 O.S. 2001, Section 7003-5.5a, as renumbered by Section 252, Chapter 233, O.S.L. 2009, and as last amended by Section 13, Chapter 278, O.S.L. 2010 (10A O.S. Supp. 2010, Section 1-4-806), which relates to trial home reunification procedure; requiring certain background checks prior to trial reunification; amending 10 O.S. 2001, Section 7003-5.6, as last amended by Section 40, Chapter 233, O.S.L. 2009, and as renumbered by Section 253, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-4-807), which relates to review hearing requirements; specifying that certain reports shall be provided to specified parties; amending 10 O.S. 2001, Section 7005-1.1, as amended by Section 71, Chapter 233, O.S.L. 2009 and as renumbered by Section 269, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-6-101), which relates to definitions; modifying certain definition; amending Section 4, Chapter 351, O.S.L. 2007, as last amended by Section 75, Chapter 233, O.S.L. 2009, and as renumbered by Section 272, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-6-105), which relates to public disclosure of information in certain child welfare

cases; expanding disclosure of certain investigations; modifying time requirement; and providing an effective date.

SUBJECT: Children and Juvenile Code

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 1 of Enrolled Senate Bill No. 553 of the 1st Session of the 53rd Oklahoma Legislature, 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 1-4-101 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.

D. If, upon receipt of a report alleging abuse or neglect, the Department determines that the family has been the subject of a deprived petition, the Department shall conduct a thorough investigation of the allegations and shall not limit the evaluation of the circumstances to an assessment. In addition, if the family has been the subject of three or more referrals, the Department shall conduct a thorough investigation of the allegations and shall not limit the evaluation of the circumstances to an assessment.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-5.5a, as renumbered by Section 252, Chapter 233, O.S.L. 2009, and as last amended by Section 13, Chapter 278, O.S.L. 2010 (10A O.S. Supp. 2010, Section 1-4-806), is amended to read as follows:

Section 1-4-806. A. The court may order a trial home reunification by returning the child to the care of the parent or legal guardian from whom the child was removed for a period not to exceed six (6) months; provided, when determined necessary the court may extend the period of trial reunification to a specific date certain by entering such extension order prior to the expiration of the initial six-month trial reunification period. The Department of Human Services shall conduct a criminal background check of any adult in the home prior to any trial reunification. The background check shall include inquiries into Oklahoma State Bureau of Investigation and Federal Bureau of Investigation records for a national criminal history record check pursuant to the provisions of Section 150.9 of Title 74 of the Oklahoma Statutes.

During the period of the trial home reunification, the Department of Human Services shall:

1. Continue to have legal custody of the child, thereby permitting the Department to visit the child in the home of the parent, at school, in a child care facility, or any other setting the Department deems necessary and appropriate;

2. Continue to provide appropriate services to both the parent, if eligible, and the child during the period of the trial home reunification;

3. Terminate the trial home reunification and remove the child to foster care, without court order or authorization, when necessary to protect the child's health, safety, or welfare; and

4. Advise the court and parties within three (3) judicial days of the termination of the trial home reunification when terminated by the Department without a court order.

B. 1. When trial home reunification is terminated whether by the Department or court order, the Department shall prepare a report for the court which describes the circumstances of the child during the trial home reunification period and recommends court orders, if any, deemed appropriate to provide for the safety and stability of the child.

2. In the event a trial home reunification is terminated by the Department by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within fifteen (15) days of receiving notice of the termination of the trial home reunification by the Department and shall determine whether a continuation of the child in the child's home or with the child's caretaker is contrary to the welfare of the child and whether reasonable efforts were made to prevent the removal of the child from the trial home reunification.

C. 1. Upon the completion of the six-month trial home reunification period or any extension thereof, the court may further extend supervision of the child in the home by awarding legal custody of the child to the parent or legal guardian with whom the child has been reunited and ordering the Department to provide supervision in accordance with the rules promulgated by the Commission.

2. The duration of the extended supervision shall not exceed six (6) months except in circumstances the court deems appropriate and necessary to protect the health, safety or welfare of the child.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7003-5.6, as last amended by Section 40, Chapter 233, O.S.L. 2009, and as renumbered by Section 253, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-4-807), is amended to read as follows:

Section 1-4-807. A. 1. Every case regarding a child alleged or adjudicated to be deprived shall be reviewed by the court at a

hearing no later than six (6) months from the date of the child's removal from the home and at least once every six (6) months thereafter until permanency is achieved or the court otherwise terminates jurisdiction except as otherwise set forth in paragraph 2 of this subsection. A review hearing may be held concurrently with a permanency hearing.

2. When the Department of Human Services has documented a compelling reason why a petition to terminate parental rights to a child is not in the best interests of the child that is based upon a consideration that the child is presently not capable of functioning in a family setting, the court shall reevaluate the status of the child every ninety (90) days until there is a final determination that the child cannot be placed in a family setting.

3. At any time during the pendency of the case, any party may request the court to review the case. If granted, the requesting party shall serve notice on all parties of the date and time of the hearing.

B. If a foster parent, preadoptive parent, or relative is currently providing care for a child, the Department shall give the foster parent, preadoptive parent, or relative notice of a proceeding concerning the child. A foster parent, preadoptive parent, or relative providing care for a child has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent, or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

C. The court shall receive all evidence helpful in deciding the issues before the court including, but not limited to, oral and written reports, which may be admitted and relied upon to the extent of their probative value, even though not competent for purposes of an adjudicatory hearing. All service provider progress reports and critical incident reports shall be submitted to the court and shall also be delivered to the District Attorney, the attorney or attorneys representing the parents, the child's attorney and guardian ad litem, if applicable, and the relevant tribe or tribes, if applicable.

D. At each review hearing the court shall:

1. Determine and include the following in its orders:

- a. whether the individualized service plan, services, and placement meet the special needs and best interests of the child with the child's health, safety, and educational needs specifically addressed,
- b. whether there is a need for the continued placement of the child,
- c. whether the current permanency plan for the child remains the appropriate plan to meet the health, safety, and best interests of the child,
- d. whether the services set forth in the individualized service plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances or as the court determines to be in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child,
- e. whether the terms of visitation need to be modified, including the visitation with siblings if separated,
- f. the time frame that should be followed to achieve reunification or other permanent plan for the child,
- g. whether reasonable efforts have been made to provide for the safe return of the child to the child's own home. If the court determines or has previously determined that reasonable efforts are not required pursuant to the provisions of Section 1-4-809 of this title, or that continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan for the child, the court shall determine if reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and determine the steps necessary to finalize permanency for the child,
- h. where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the child in making the transition from foster care to independent living.

The court shall inquire or cause inquiry to be made of the child regarding any proposed independent living plan,

- i. whether the nature and extent of services being provided the child and parent or parents of the child are adequate and shall order that additional services be provided or studies, assessments, or evaluations be conducted, if necessary, to ensure the safety of the child and to protect the child from further physical, mental, or emotional harm, or to correct the conditions that led to the adjudication,
- j. whether, in accordance with the safety or well-being of any child, reasonable efforts have been made to:
 - (1) place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and
 - (2) provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together, and
- k. whether, during the ninety-day period immediately prior to the date on which the child in the custody of the Department will attain eighteen (18) years of age, the Department and, as appropriate, other representatives of the child are providing the child with assistance and support in developing an appropriate transition plan that is personalized at the direction of the child, that includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect;

2. Consider in-state and out-of-state placement options for the child; and

3. Determine the safety of the child and consider fully all relevant prior and current information including, but not limited to, the report or reports submitted pursuant to Sections 1-4-805 and 1-4-808 of this title.

E. In making its findings, the court shall consider the following:

1. Whether compliance with the individualized service plan has occurred, including whether the Department has provided care that is consistent with the health, safety, and educational needs of the child while in an out-of-home placement;

2. The extent of progress that has been made toward alleviating or correcting the conditions that caused the child to be adjudicated deprived;

3. Whether the child should be returned to a parent or parents and whether or not the health, safety, and welfare of the child can be protected by a parent or parents if returned home; and

4. An appropriate permanency plan for the child, including concurrent planning when applicable, pursuant to Section 1-4-706 of this title.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7005-1.1, as amended by Section 71, Chapter 233, O.S.L. 2009 and as renumbered by Section 269, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-6-101), is amended to read as follows:

Section 1-6-101. A. The court shall make and keep records of all cases brought before it. The court may devise and cause to be printed forms for records and such other papers as may be required.

B. As used in the Oklahoma Children's Code:

1. "Records" shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recordings, and shall include information entered into and maintained in an automated or computerized information system;

2. "Juvenile court record" means all records, other than adoption records, including but not limited to agency, law enforcement, and district attorney's records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the provisions of the Oklahoma Children's Code;

3. "Agency record" means records prepared, obtained, or maintained by a public or private agency with regard to a child who

is or has been under its care, custody, or supervision or to a family member or other person living in the home of such child and shall include but not be limited to:

- a. any study, plan, recommendation, assessment, or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care, or treatment of such child, or
- b. safety analysis records that have been prepared and obtained in response to a report of alleged child abuse or neglect and include assessment reports and reports to the district attorney with all supporting documentation attached and any addendums;

4. "District attorney's records" means any records prepared or obtained by an office of a district attorney relating to juvenile cases and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child as defined by this section;

5. "Law enforcement records" means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this title as a deprived child, a child in need of supervision, or a minor in need of treatment. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. "Nondirectory education records" means any records maintained by a public or private school, including a technology center school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to federal and state law;

7. "Legal record" means any petition, docket, motion, finding, order, judgment, pleading, paper, or other document, other than social records, filed with the court;

8. "Social record" means family social histories, medical reports, psychological and psychiatric evaluations or assessments, ~~clinical or other treatment reports~~, educational records, or home

studies, even if attached to court reports prepared by the Department. "Social record" shall not include service provider progress reports or critical incident reports as required pursuant to Section 1-4-807 of this title; and

9. "Participating agency" means any public or private agency that has entered into a contract or an interagency agreement under the Interlocal Cooperation Act in accordance with the rules and guidelines adopted pursuant to Section 620.6 of this title for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth.

SECTION 5. AMENDATORY Section 4, Chapter 351, O.S.L. 2007, as last amended by Section 75, Chapter 233, O.S.L. 2009, and as renumbered by Section 272, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010, Section 1-6-105), is amended to read as follows:

Section 1-6-105. A. For purposes of this section, the term "near death" means the child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

B. When a person responsible for a child has been charged by information or indictment with committing a crime resulting in the death or near death of the child, there shall be a presumption that the best interest of the public is served by public disclosure of certain information concerning:

1. The circumstances of the investigation of the death or near death of the child; and

2. Any other investigations concerning that child, or other children while living in the same household, ~~within:~~

a. ~~three (3) years of the death or near death, and~~

b. ~~one (1) year after the death or near death.~~

C. 1. At any time subsequent to seven (7) days, but no more than ~~thirty (30)~~ forty-five (45) days, of the date the person responsible for the child has been criminally charged, the Department of Human Services, the district attorney, the district court clerk, and the judge having jurisdiction over the case, upon request, shall release certain information to the public as follows:

- a. a confirmation shall be provided by the Department as to whether a report has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,
- b. confirmation shall be provided by the Department as to whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department in response to a previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,
- c. the dates of any judicial proceedings prior to the death or near death of the child,
- d. recommendations submitted by each participant in writing at the judicial proceedings including recommendations made at the hearing as they relate to custody or placement of a child, and
- e. the rulings of the court.

2. Specific recommendations made and services rendered by the Department described in any progress reports of a pending case submitted to the court may be disclosed by the Department.

D. 1. At any time subsequent to seven (7) days after the date the person responsible for the child has been criminally charged, the Oklahoma Commission on Children and Youth shall, upon request, release certain information to the public within sixty (60) days of the request as follows:

- a. a confirmation shall be provided by the Commission as to whether a report of suspected child abuse or neglect has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,
- b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the

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

- c. the dates of any judicial proceedings prior to the death or near death of the child,
- d. recommendations submitted by the Department and the Commission shall be provided in writing including recommendations made at the hearing as they relate to custody or placement of a child, and
- e. the rulings of the court.

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

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

SECTION 6. This act shall become effective November 1, 2011.

Passed the House of Representatives the 10th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 26th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____