

1 **SENATE FLOOR VERSION**

2 April 7, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 2136

6 By: Steele, Billy, Roan,
7 Dorman, Walker, Virgin,
8 Stiles and Brumbaugh of the
9 House

10 and

11 Newberry of the Senate

12 An Act relating to the Children and Juvenile Code;
13 amending 10 O.S. 2001, Section 7003-1.1, as
14 renumbered by Section 213, Chapter 233, O.S.L. 2009,
15 and as last amended by Section 1, Chapter 220, O.S.L.
16 2010 (10A O.S. Supp. 2010, Section 1-2-102), which
17 relates to preliminary investigation procedures;
18 directing Department of Human Services to conduct
19 investigations instead of assessments in certain
20 circumstances; specifying requirements; amending 10
21 O.S. 2001, Section 7003-5.5a, as renumbered by
22 Section 252, Chapter 233, O.S.L. 2009, and as last
23 amended by Section 13, Chapter 278, O.S.L. 2010 (10A
24 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 parties;
providing for exception; 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

1 investigations; **modifying time requirement**; and
2 providing an effective date.

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

5 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-1.1, as
6 renumbered by Section 213, Chapter 233, O.S.L. 2009, and as last
7 amended by Section 1, Chapter 220, O.S.L. 2010 (10A O.S. Supp. 2010,
8 Section 1-2-102), is amended to read as follows:

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

12 2. The Department shall forward a report of its assessment or
13 investigation and findings to any district attorney's office which
14 may have jurisdiction to file a petition pursuant to Section ~~1-4-902~~
15 1-4-101 of this title.

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

19 a. the alleged perpetrator is someone other than a person
20 responsible for the child's health, safety, or
21 welfare, and

22 b. the alleged abuse or neglect of the child does not
23 appear to be attributable to failure on the part of a
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1 person responsible for the child's health, safety, or
2 welfare to provide protection for the child,
3 the Department shall immediately make a referral, either verbally or
4 in writing, to the appropriate local law enforcement agency for the
5 purpose of conducting a possible criminal investigation.

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

- 9 a. the Department has reason to believe the alleged
10 perpetrator is a parent of another child, not the
11 subject of the criminal investigation, or is otherwise
12 a person responsible for the health, safety, or
13 welfare of another child,
- 14 b. notice is received from a law enforcement agency that
15 it has determined the alleged perpetrator is a parent
16 of or a person responsible for the health, safety, or
17 welfare of another child not the subject of the
18 criminal investigation, or
- 19 c. the appropriate law enforcement agency requests the
20 Department, in writing, to participate in the
21 investigation. If funds and personnel are available,
22 as determined by the Director of the Department or a
23 designee, the Department may assist law enforcement in

1 interviewing children alleged to be victims of
2 physical or sexual abuse.

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

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

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

1 shall immediately contact the Department for the purpose of an
2 investigation.

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

11 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-5.5a,
12 as renumbered by Section 252, Chapter 233, O.S.L. 2009, and as last
13 amended by Section 13, Chapter 278, O.S.L. 2010 (10A O.S. Supp.
14 2010, Section 1-4-806), is amended to read as follows:

15 Section 1-4-806. A. The court may order a trial home
16 reunification by returning the child to the care of the parent or
17 legal guardian from whom the child was removed for a period not to
18 exceed six (6) months; provided, when determined necessary the court
19 may extend the period of trial reunification to a specific date
20 certain by entering such extension order prior to the expiration of
21 the initial six-month trial reunification period. The Department of
22 Human Services shall conduct a criminal background check of any
23 adult in the home prior to any trial reunification. The background
24 check shall include inquiries into Oklahoma State Bureau of

1 Investigation and Federal Bureau of Investigation records for a
2 national criminal history record check pursuant to the provisions of
3 Section 150.9 of Title 74 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

20 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7003-5.6, as
21 last amended by Section 40, Chapter 233, O.S.L. 2009, and as
22 renumbered by Section 253, Chapter 233, O.S.L. 2009 (10A O.S. Supp.
23 2010, Section 1-4-807), is amended to read as follows:

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1 Section 1-4-807. A. 1. Every case regarding a child alleged
2 or adjudicated to be deprived shall be reviewed by the court at a
3 hearing no later than six (6) months from the date of the child's
4 removal from the home and at least once every six (6) months
5 thereafter until permanency is achieved or the court otherwise
6 terminates jurisdiction except as otherwise set forth in paragraph 2
7 of this subsection. A review hearing may be held concurrently with
8 a permanency hearing.

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

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

20 B. If a foster parent, preadoptive parent, or relative is
21 currently providing care for a child, the Department shall give the
22 foster parent, preadoptive parent, or relative notice of a
23 proceeding concerning the child. A foster parent, preadoptive
24 parent, or relative providing care for a child has the right to be

1 heard at the proceeding. Except when allowed to intervene, the
2 foster parent, preadoptive parent, or relative providing care for
3 the child is not considered a party to the juvenile court proceeding
4 solely because of notice and the right to be heard at the
5 proceeding.

6 C. The court shall receive all evidence helpful in deciding the
7 issues before the court including, but not limited to, oral and
8 written reports, which may be admitted and relied upon to the extent
9 of their probative value, even though not competent for purposes of
10 an adjudicatory hearing. All service provider progress reports or
11 critical incident reports submitted to the court shall also be
12 delivered to each party, unless the provider progress report or
13 critical incident report is a social record as defined in Section 1-
14 6-106 of this title.

15 D. At each review hearing the court shall:

16 1. Determine and include the following in its orders:

17 a. whether the individualized service plan, services, and
18 placement meet the special needs and best interests of
19 the child with the child's health, safety, and
20 educational needs specifically addressed,

21 b. whether there is a need for the continued placement of
22 the child,
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- 1 c. whether the current permanency plan for the child
2 remains the appropriate plan to meet the health,
3 safety, and best interests of the child,
- 4 d. whether the services set forth in the individualized
5 service plan and the responsibilities of the parties
6 need to be clarified or modified due to the
7 availability of additional information or changed
8 circumstances or as the court determines to be in the
9 best interests of the child and necessary for the
10 correction of the conditions that led to the
11 adjudication of the child,
- 12 e. whether the terms of visitation need to be modified,
13 including the visitation with siblings if separated,
- 14 f. the time frame that should be followed to achieve
15 reunification or other permanent plan for the child,
- 16 g. whether reasonable efforts have been made to provide
17 for the safe return of the child to the child's own
18 home. If the court determines or has previously
19 determined that reasonable efforts are not required
20 pursuant to the provisions of Section 1-4-809 of this
21 title, or that continuation of reasonable efforts to
22 reunite the child with the child's family is
23 inconsistent with the permanency plan for the child,
24 the court shall determine if reasonable efforts are

1 being made to place the child in a timely manner in
2 accordance with the permanency plan and determine the
3 steps necessary to finalize permanency for the child,

4 h. where appropriate, when the child is sixteen (16)
5 years of age or older, whether services are being
6 provided that will assist the child in making the
7 transition from foster care to independent living.
8 The court shall inquire or cause inquiry to be made of
9 the child regarding any proposed independent living
10 plan,

11 i. whether the nature and extent of services being
12 provided the child and parent or parents of the child
13 are adequate and shall order that additional services
14 be provided or studies, assessments, or evaluations be
15 conducted, if necessary, to ensure the safety of the
16 child and to protect the child from further physical,
17 mental, or emotional harm, or to correct the
18 conditions that led to the adjudication,

19 j. whether, in accordance with the safety or well-being
20 of any child, reasonable efforts have been made to:
21 (1) place siblings, who have been removed, together
22 in the same foster care, guardianship, or
23 adoptive placement, and
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1 (2) provide for frequent visitation or other ongoing
2 interaction in the case of siblings who have been
3 removed and who are not placed together, and

4 k. whether, during the ninety-day period immediately
5 prior to the date on which the child in the custody of
6 the Department will attain eighteen (18) years of age,
7 the Department and, as appropriate, other
8 representatives of the child are providing the child
9 with assistance and support in developing an
10 appropriate transition plan that is personalized at
11 the direction of the child, that includes specific
12 options on housing, health insurance, education, local
13 opportunities for mentors and continuing support
14 services, and work force supports and employment
15 services, and is as detailed as the child may elect;

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

18 3. Determine the safety of the child and consider fully all
19 relevant prior and current information including, but not limited
20 to, the report or reports submitted pursuant to Sections 1-4-805 and
21 1-4-808 of this title.

22 E. In making its findings, the court shall consider the
23 following:
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1 1. Whether compliance with the individualized service plan has
2 occurred, including whether the Department has provided care that is
3 consistent with the health, safety, and educational needs of the
4 child while in an out-of-home placement;

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

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

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

14 SECTION 4. AMENDATORY Section 4, Chapter 351, O.S.L.
15 2007, as last amended by Section 75, Chapter 233, O.S.L. 2009, and
16 as renumbered by Section 272, Chapter 233, O.S.L. 2009 (10A O.S.
17 Supp. 2010, Section 1-6-105), is amended to read as follows:

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

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

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

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

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

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

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

15 a. a confirmation shall be provided by the Department as
16 to whether a report has been made concerning the
17 alleged victim or other children while living in the
18 same household and whether an investigation has begun,

19 b. confirmation shall be provided by the Department as to
20 whether previous reports have been made and the dates
21 thereof, a summary of those previous reports, the
22 dates and outcome of any investigations or actions
23 taken by the Department in response to a previous
24 report of child abuse or neglect, and the specific

- 1 recommendation made to the district attorney and any
2 subsequent action taken by the district attorney,
3 c. the dates of any judicial proceedings prior to the
4 death or near death of the child,
5 d. recommendations submitted by each participant in
6 writing at the judicial proceedings including
7 recommendations made at the hearing as they relate to
8 custody or placement of a child, and
9 e. the rulings of the court.

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

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

- 18 a. a confirmation shall be provided by the Commission as
19 to whether a report of suspected child abuse or
20 neglect has been made concerning the alleged victim or
21 other children while living in the same household and
22 whether an investigation has begun,
23 b. confirmation shall be provided by the Commission as to
24 whether previous reports of suspected child abuse or

1 neglect have been made and the dates thereof, a
2 summary of those previous reports, the dates and
3 outcome of any investigations or actions taken by the
4 Department and the Commission in response to any
5 previous report of child abuse or neglect, and the
6 specific recommendation made to the district attorney
7 and any subsequent action taken by the district
8 attorney,

9 c. the dates of any judicial proceedings prior to the
10 death or near death of the child,

11 d. recommendations submitted by the Department and the
12 Commission shall be provided in writing including
13 recommendations made at the hearing as they relate to
14 custody or placement of a child, and

15 e. the rulings of the court.

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

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

3 SECTION 5. This act shall become effective November 1, 2011.

4 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
5 4-4-11 - DO PASS, As Amended and Coauthored.

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