HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2588

By: Ownbey, Nelson and Kern of the House

and

Simpson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to foster care; amending 10 O.S. 2011, Section 601.6, which relates to the Office of Juvenile System Oversight; directing receipt of certain foster parent complaint; describing nature of complaints; directing complaints be forwarded to Office of Client Advocacy for investigation; requiring work between offices to ensure investigation and disposition of complaints; providing exception; amending 10A O.S. 2011, Sections 1-9-112, as amended by Section 7, Chapter 353, O.S.L. 2012, 1-9-119 and 1-9-120 (10A O.S. Supp. 2013, Section 1-9-112), which relate to the Oklahoma Children's Code; specifying how complaints are received; requiring bill of rights be given to foster parents annually; directing Office of Client Advocacy work with Office of Juvenile System Oversight to track complaints; setting time frame for resolution of grievances; requiring notification of grievance procedures at the time of placement; directing designation of certain employee; requiring an annual report; describing contents of annual report; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2011, Section 601.6, is amended to read as follows:

Section 601.6 A. The Office of Juvenile System Oversight shall have the responsibility of investigating and reporting misfeasance and malfeasance within the children and youth service system, inquiring into areas of concern, investigating complaints filed with the Office of Juvenile System Oversight, and performing issue-specific systemic monitoring as directed by the Commission on Children and Youth of the children and youth service system to ascertain compliance with established responsibilities.

It shall be the duty of the Office of Juvenile System Oversight to conduct not less than one but not more than two regular, periodic, unannounced inspections of state-operated children's institutions and facilities and to review the reports of the inspections of the State Fire Marshal and the Department of Health and any agencies which accredit such institutions and facilities.

B. The Office of Juvenile System Oversight shall:

1. Have the authority to examine and copy all records and budgets pertaining to the children and youth service system and to interview the residents of such facilities and shall have access to all facilities within the children and youth service system for the purpose of conducting systemic oversight and complaint investigations;

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2. Have the authority to subpoena witnesses and hold public hearings;

3. Establish, in accordance with the Dispute Resolution Act, Sections 1801 through 1813 of Title 12 of the Oklahoma Statutes, a voluntary program for foster parents to mediate complaints concerning the rights of foster parents, as provided for in Section ~~7206.1~~ 1-9-119 of ~~this title~~ Title 10A of the Oklahoma Statutes, that relate to certain actions, inactions or decisions of the Department of Human Services, the Department of Juvenile Justice, or child-placing agencies that may adversely affect the safety and well-being of children in the custody of the state;

4. Receive any complaint alleging that an employee of the Department of Human Services 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 Title 10A of the Oklahoma Statutes,

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.

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The Office of Juvenile System Oversight shall forward the complaints to the Office of Client Advocacy for investigation pursuant to subsection D of Section 1-9-112 of Title 10A of the Oklahoma Statutes. The Office of Juvenile System Oversight shall work with the Office of Client Advocacy to ensure the complaints are investigated and resolved in accordance with the grievance procedures provided in Section 1-9-120 of Title 10A of the Oklahoma Statutes. The provisions of this paragraph 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;

5. Issue reports to the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate, Chief Justice of the Supreme Court of the State of Oklahoma, any appropriate prosecutorial agency, the director of the agency under consideration, and other persons as necessary and appropriate; and

~~5.~~ 6. Provide recommendations to the Oklahoma Commission on Children and Youth on or before May 1 of each year.

C. The Office of Juvenile System Oversight shall not release information that would identify a person who makes a complaint to the Office, unless a court of competent jurisdiction orders release of the information for good cause shown.

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SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-9-112, as amended by Section 7, Chapter 353, O.S.L. 2012 (10A O.S. Supp. 2013, Section 1-9-112), is amended to read as follows:

Section 1-9-112. A. 1. The Director of 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. 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:

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(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,

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(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

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System Oversight and other appropriate persons as necessary,

h. forward to the Office of Juvenile ~~Systems~~ System 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

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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 received by the Office of Juvenile System Oversight 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,

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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 10A O.S. 2011, Section 1-9-119, is amended to read as follows:

Section 1-9-119. A. A statement of foster parent's rights shall <u>be given to every foster parent annually and shall</u> include, but not be limited to, the right to:

1. Be treated with dignity, respect, and consideration as a professional member of the child welfare team;

2. Be notified of and be given appropriate, ongoing education and continuing education and training to develop and enhance foster parenting skills;

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3. Be informed about ways to contact the state agency or the child-placing agency in order to receive information and assistance to access supportive services for any child in the foster parent's care;

4. Receive timely financial reimbursement for providing foster care services;

5. Be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;

6. Be provided a clear, written explanation of the individual treatment and service plan concerning the child in the foster parent's home, listing components of the plan pursuant to the provisions of the Oklahoma Children's Code;

7. Receive, at any time during which a child is placed with the foster parent, additional or necessary information that is relevant to the care of the child;

8. Be notified of scheduled review meetings, permanency planning meetings, and special staffing concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child;

9. Provide input concerning the plan of services for the child and to have that input be given full consideration in the same manner as information presented by any other professional on the team;

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10. Communicate with other foster parents in order to share information regarding the foster child. In particular, receive any information concerning the number of times a foster child has been moved and the reasons why, and the names and telephone numbers of the previous foster parent if the previous foster parent has authorized such release;

11. Communicate with other professionals who work with the foster child within the context of the team including, but not limited to, therapists, physicians, and teachers;

12. Be given, in a timely and consistent manner, any information regarding the child and the child's family which is pertinent to the care and needs of the child and to the making of a permanency plan for the child. Disclosure of information shall be limited to that information which is authorized by the provisions of Chapter VI of the Oklahoma Children's Code for foster parents;

13. Be given reasonable notice of any change in or addition to the services provided to the child pursuant to the child's individual treatment and service plan;

14. a. Be given written notice of:

(1) plans to terminate the placement of the child with the foster parent pursuant to Section 1-4-805 of this title, and

(2) the reasons for the changes or termination in placement.

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b. The notice shall be waived only in emergency cases pursuant to Section 1-4-805 of this title;

15. Be notified by the applicable state agency in a timely and complete manner of all court hearings, including notice of the date and time of any court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case;

16. Be informed of decisions made by the court, the state agency or the child-placing agency concerning the child;

17. Be considered as a preferred placement option when a foster child who was formerly placed with the foster parent is to reenter foster care at the same level and type of care, if that placement is consistent with the best interest of the child and other children in the home of the foster parent;

18. Be provided a fair, timely, and impartial investigation of complaints concerning the certification of the foster parent;

19. Be provided the opportunity to request and receive a fair and impartial hearing regarding decisions that affect certification retention or placement of children in the home;

20. Be allowed the right to exercise parental substitute authority;

21. Have timely access to the appeals process of the state agency and child placement agency and the right to be free from acts

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of harassment and retaliation by any other party when exercising the right to appeal;

22. Be given the number of the statewide toll-free Foster Parent Hotline; and

23. File a grievance and be informed of the process for filing a grievance.

B. The Department of Human Services and a child-placing agency under contract with the Department shall be responsible for implementing this section.

C. Nothing in this section shall be construed to create a private right of action or claim on the part of any individual, the Department, the Office of Juvenile Affairs, or any child-placing agency.

SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-9-120, is amended to read as follows:

Section 1-9-120. A. The ~~Department of Human Services~~ Office of Client Advocacy and child-placing agencies shall each establish grievance procedures for foster parents with whom ~~such state agencies~~ the Department of Human Services or child-placing agencies contract. The Office of Client Advocacy shall work with the Office of Juvenile System Oversight to track foster parent complaints through the grievance procedures and ensure a resolution of the complaint.

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B. The procedures established shall contain the following minimum requirements:

1. Resolution of disputes with foster parents shall be accomplished quickly, informally and at the lowest possible level, but shall provide for access to impartial arbitration by management level personnel within the central office; ~~and~~

2. Prompt resolution of grievances ~~within established time frames~~ no more than sixty (60) days after receipt of the grievance or complaint; and

3. Notification to all foster parents upon placement of a child about the grievance procedures and how to file a complaint.

C. The ~~Department~~ Office of Client Advocacy and child-placing agency shall designate ~~an~~ one employee at the central office to receive and process foster care grievances received by the Office of Juvenile System Oversight.

D. The ~~Department~~ Office of Client Advocacy and child-placing agency shall maintain records of each grievance filed as well as summary information about the number, nature and outcome of all grievances filed. The Office of Client Advocacy and the Office of Juvenile System Oversight shall compile an annual report for the Oklahoma Legislature that details the number of complaints received, the number of complaints resolved, the nature of the complaints and any other information requested by the Legislature. Agencies shall keep records of grievances separate and apart from other foster

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parent files. A foster parent or a former foster parent shall have a right of access to the record of grievances such person filed after the procedure has been completed.

E. 1. Each foster parent shall have the right, without fear of reprisal or discrimination, to present grievances with respect to the providing of foster care services.

2. The Department of Human Services shall promptly initiate a plan of corrective discipline including, but not limited to, dismissal of any Department employee or cancellation or nonrenewal of the contract of a child-placing agency determined by the state agency, through an investigation to have retaliated or discriminated against a foster parent who has:

a. filed a grievance pursuant to the provisions of this section,

b. provided information to any official or Department employee, or

c. testified, assisted, or otherwise participated in an investigation, proceeding or hearing against the Department or the child-placing agency.

3. The provisions of this subsection shall not be construed to include any complaint by the foster parent resulting from an administrative, civil or criminal action taken by the employee or child-placing agency for violations of law or rules, or contract provisions by the foster parent.

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SECTION 5. 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.

COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02/19/2014 - DO PASS, As Amended and Coauthored.

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