STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 292 By: Griffin

AS INTRODUCED

An Act relating to child abuse and neglect; amending 10A O.S. 2011, Section 1-1-105, as last amended by Section 3, Chapter 353, O.S.L. 2012 (10A O.S. Supp. 2014, Section 1-1-105), which relates to definitions; modifying definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-1-105, as last amended by Section 3, Chapter 353, O.S.L. 2012 (10A O.S. Supp. 2014, Section 1-1-105), is amended to read as follows:

Section 1-1-105. When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. "Abandonment" means:

a. the willful intent by words, actions, or omissions not to return for a child, or

b. the failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant, or

c. the failure to respond to notice of deprived proceedings;

2. "Abuse" means harm or threatened harm ~~or failure to protect from harm or threatened harm~~ to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

a. "Harm or threatened harm to the health or safety of a child" means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including but not limited to sexual abuse, sexual exploitation, neglect, or dependency.

b. "Sexual abuse" includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child.

c. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the health, safety, or welfare of a child, or allowing, permitting, encouraging, or

engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child;

3. "Adjudication" means a finding by the court that the allegations in a petition alleging that a child is deprived are supported by a preponderance of the evidence;

4. "Adjudicatory hearing" means a hearing by the court as provided by Section 1-4-601 of this title;

5. "Assessment" means a comprehensive review of child safety and evaluation of family functioning and protective capacities that is conducted in response to a child abuse or neglect referral that does not allege a serious and immediate safety threat to a child;

6. "Behavioral health" means mental health, substance abuse, or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment;

7. "Child" means any unmarried person under eighteen (18) years of age;

8. "Child advocacy center" means a center and the multidisciplinary child abuse team of which it is a member that is accredited by the National Children's Alliance or that is completing a sixth year of reaccreditation. Child advocacy centers shall be

classified, based on the child population of a district attorney's district, as follows:

a. nonurban centers in districts with child populations that are less than sixty thousand (60,000), and

b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa counties;

9. "Child with a disability" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child, or who is regarded as having such an impairment by a competent medical professional;

10. "Child-placing agency" means an agency that arranges for or places a child in a foster family home, group home, adoptive home, or independent living program;

11. "Commission" means the Commission for Human Services;

12. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling,

early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

13. "Concurrent permanency planning" means, when indicated, the implementation of two plans for a child entering foster care. One plan focuses on reuniting the parent and child; the other seeks to find a permanent out-of-home placement for the child with both plans being pursued simultaneously;

14. "Court-appointed special advocate" or "CASA" means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and when appointed by the court, serves as an officer of the court in the capacity as a guardian ad litem;

15. "Court-appointed special advocate program" means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent, not-for-profit corporation or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem;

16. "Custodian" means an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. As used in this title, the term "custodian" shall not mean the Department of Human Services;

17. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

18. "Department" means the Department of Human Services;

19. "Dependency" means a child who is homeless or without proper care or guardianship through no fault of his or her parent, legal guardian, or custodian;

20. "Deprived child" means a child:

a. who is for any reason destitute, homeless, or abandoned,

b. who does not have the proper parental care or guardianship,

c. who has been abused, neglected, or is dependent,

d. whose home is an unfit place for the child by reason of depravity on the part of the parent or legal guardian of the child, or other person responsible for the health or welfare of the child,

e. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this

paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child,

f. who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of the child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment shall be necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,

g. who, due to improper parental care and guardianship, is absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance,

h. whose parent, legal guardian or custodian for good cause desires to be relieved of custody,

i. who has been born to a parent whose parental rights to another child have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the parent to the other child, have not been corrected, or

j. whose parent, legal guardian, or custodian has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, legal guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

21. "Dispositional hearing" means a hearing by the court as provided by Section 1-4-706 of this title;

22. "Drug-endangered child" means a child who is at risk of suffering physical, psychological or sexual harm as a result of the use, possession, distribution, manufacture or cultivation of controlled substances, or the attempt of any of these acts, by a person responsible for the health, safety or welfare of the child, as defined in paragraph 51 of this section. This term includes circumstances wherein the substance abuse of the person responsible for the health, safety or welfare of the child interferes with that person's ability to parent and provide a safe and nurturing environment for the child. The term also includes newborns who test positive for a controlled dangerous substance, with the exception of those substances administered under the care of a physician;

23. "Emergency custody" means the custody of a child prior to adjudication of the child following issuance of an order of the district court pursuant to Section 1-4-201 of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 1-4-203 of this title;

24. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children;

25. <u>"Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect, and includes the</u>

conduct of a non-abusing parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals or fails to report the child abuse or neglect or otherwise take reasonable action to end the abuse or neglect;

26. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child in foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent;

~~26.~~ 27. "Foster family home" means the private residence of a foster parent who provides foster care services to a child. Such term shall include a nonkinship foster family home, a therapeutic foster family home, or the home of a relative or other kinship care home;

~~27.~~ 28. "Foster parent eligibility assessment" includes a criminal background investigation including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Office of Juvenile Affairs, or any child-placing agency pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

~~28.~~ 29. "Guardian ad litem" means a person appointed by the court pursuant to the provisions of Section 1-4-306 of this title having those duties and responsibilities as set forth in that

section. The term "guardian ad litem" shall refer to a court-appointed special advocate as well as to any other person appointed pursuant to the provisions of Section 1-4-306 of this title to serve as a guardian ad litem;

~~29.~~ 30. "Guardian ad litem of the estate of the child" means a person appointed by the court to protect the property interests of a child pursuant to Section 1-8-109 of this title;

~~30.~~ 31. "Group home" means a residential facility licensed by the Department to provide full-time care and community-based services for more than five but fewer than thirteen children;

~~31.~~ 32. "Harm or threatened harm to the health or safety of a child" means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency;

~~32.~~ 33. "Heinous and shocking abuse" includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. "Serious bodily injury" means injury that involves:

a. a substantial risk of death,

b. extreme physical pain,

c. protracted disfigurement,

d. a loss or impairment of the function of a body member, organ, or mental faculty,

e. an injury to an internal or external organ or the body,

f. a bone fracture,

g. sexual abuse or sexual exploitation,

h. chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation which is repeated or continuing,

i. torture that includes, but is not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person, or

j. any other similar aggravated circumstance;

~~33.~~ 34. "Heinous and shocking neglect" includes, but is not limited to:

a. chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child which results in harm to the child,

b. neglect that has resulted in a diagnosis of the child as a failure to thrive,

c. an act or failure to act by a parent that results in the death or near death of a child or sibling, serious physical or emotional harm, sexual abuse, sexual exploitation, or presents an imminent risk of serious harm to a child, or

d. any other similar aggravating circumstance;

~~34.~~ 35. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, such features as minimal direct staff supervision, and the provision of supportive services to assist children with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

~~35.~~ 36. "Individualized service plan" means a document written pursuant to Section 1-4-704 of this title that has the same meaning as "service plan" or "treatment plan" where those terms are used in the Oklahoma Children's Code;

~~36.~~ 37. "Infant" means a child who is twelve (12) months of age or younger;

~~37.~~ 38. "Institution" means a residential facility offering care and treatment for more than twenty residents;

~~38.~~ 39. a. "Investigation" means a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of the child, making it necessary to determine:

(1) the current safety of a child and the risk of subsequent abuse or neglect, and

(2) whether child abuse or neglect occurred and whether the family needs prevention- and intervention-related services.

b. "Investigation" results in a written response stating one of the following findings:

(1) "Substantiated" means the Department has determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect has occurred. When child abuse or neglect is substantiated, the Department may recommend:

(a) court intervention if the Department finds the health safety, or welfare of the child is threatened, or

(b) child abuse and neglect prevention and intervention-related services for the child, parents or persons responsible for the care

of the child if court intervention is not determined to be necessary,

(2) "Unsubstantiated – Services recommended" means the Department has determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine whether child abuse or neglect has occurred. If child abuse or neglect is unsubstantiated, the Department may recommend, when determined to be necessary, that the parents or persons responsible for the care of the child obtain child abuse and neglect prevention- and intervention-related services, or

(3) "Ruled out" means a report in which a child protective services specialist has determined, after an investigation of a report of child abuse or neglect, that no child abuse or neglect has occurred;

~~39.~~ 40. "Kinship care" means full-time care of a child by a kinship relation;

~~40.~~ 41. "Kinship guardianship" means a permanent guardianship as defined in this section;

~~41.~~ 42. "Kinship relation" or "kinship relationship" means relatives, stepparents, or other responsible adults who have a bond

or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child; provided, however, in cases where the Indian Child Welfare Act applies, the definitions contained in 25 U.S.C., Section 1903 shall control;

~~42.~~ 43. "Mental health facility" means a mental health or substance abuse treatment facility as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

~~43.~~ 44. "Minor" means the same as the term "child" as defined in this section;

~~44.~~ 45. "Minor in need of treatment" means a child in need of mental health or substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

~~45.~~ 46. "Multidisciplinary child abuse team" means any team established pursuant to Section 1-9-102 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse. For purposes of this definition, "freestanding" means a team not used by a child advocacy center for its accreditation;

~~46.~~ 47. "Near death" means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

~~47.~~ 48. "Neglect" means:

a. the failure or omission to provide any of the following:

(1) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,

(2) medical, dental, or behavioral health care,

(3) supervision or appropriate caretakers, or

(4) special care made necessary by the physical or mental condition of the child,

b. the failure or omission to protect a child from exposure to any of the following:

(1) the use, possession, sale, or manufacture of illegal drugs,

(2) illegal activities, or

(3) sexual acts or materials that are not age-appropriate, or

c. abandonment.

Nothing in this paragraph shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child. Nothing contained in this paragraph

shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

~~48.~~ 49. "Permanency hearing" means a hearing by the court pursuant to Section 1-4-811 of this title;

~~49.~~ 50. "Permanent custody" means the court-ordered custody of an adjudicated deprived child when a parent-child relationship no longer exists due to termination of parental rights or due to the death of a parent or parents;

~~50.~~ 51. "Permanent guardianship" means a judicially created relationship between a child, a kinship relation of the child, or other adult established pursuant to the provisions of Section 1-4-709 of this title;

~~51.~~ 52. "Person responsible for a child's health, safety, or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

~~52.~~ 53. "Protective custody" means custody of a child taken by a law enforcement officer or designated employee of the court without a court order;

~~53.~~ 54. "Putative father" means an alleged father as that term is defined in Section 7700-102 of Title 10 of the Oklahoma Statutes;

~~54.~~ 55. "Relative" means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child;

~~55.~~ 56. "Residential child care facility" means a twenty-four-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives;

~~56.~~ 57. "Review hearing" means a hearing by the court pursuant to Section 1-4-807 of this title;

~~57.~~ 58. "Risk" means the likelihood that an incident of child abuse or neglect will occur in the future;

~~58.~~ 59. "Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;

~~59.~~ 60. "Safety analysis" means action taken by the Department in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the

information received according to priority guidelines and other criteria adopted by the Department;

~~60.~~ 61. "Safety evaluation" means evaluation of a child's situation by the Department using a structured, evidence-based tool to determine if the child is subject to a safety threat;

~~61.~~ 62. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

~~62.~~ 63. "Sibling" means a biologically or legally related brother or sister of a child;

~~63.~~ 64. "Specialized foster care" means foster care provided to a child in a foster home or agency-contracted home which:

a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,

b. is monitored by the Division, and

c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

~~64.~~ 65. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

~~65.~~ 66. "Therapeutic foster family home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

~~66.~~ 67. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. The program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

~~67.~~ 68. "Voluntary foster care placement" means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child's parent, legal guardian or custodian.

SECTION 2. This act shall become effective November 1, 2015.

55-1-261 TEK 2/18/2016 7:04:07 PM