

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 727

By: Griffin of the Senate

and

Ownbey of the House

COMMITTEE SUBSTITUTE

An Act relating to foster care; amending 10A O.S. 2011, Section 1-2-105, as last amended by Section 2, Chapter 130, O.S.L. 2016 (10A O.S. Supp. 2016, Section 1-2-105), which relates to investigations of abuse or neglect; directing collaboration for certain decisions; providing timeline for removal; amending Section 1, Chapter 143, O.S.L. 2014, as amended by Section 1, Chapter 189, O.S.L. 2015 (10A O.S. Supp. 2016, Section 1-8-111), which relates to annual credit report for youth in custody; reducing age of youth in custody of the Department that shall be provided with an annual credit report; clarifying language; amending 10A O.S. 2011, Section 1-9-105, which relates to program planning and monitoring; requiring certain report; specifying delivery of report; stipulating contents; eliminating liability for foster parents for property damage or injuries in certain circumstances; providing certain acts and omissions shall not limit liability; amending 10A O.S. 2011, Section 1-9-119, as last amended by Section 4, Chapter 257, O.S.L. 2014 (10A O.S. Supp. 2016, Section 1-9-119), which relates to foster parent rights; including certain meetings and services; providing for codification; and providing an effective date.

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

2 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-105, as
3 last amended by Section 2, Chapter 130, O.S.L. 2016 (10A O.S. Supp.
4 2016, Section 1-2-105), is amended to read as follows:

5 Section 1-2-105. A. 1. Any county office of the Department of
6 Human Services receiving a child abuse or neglect report shall
7 promptly respond to the report by initiating an investigation of the
8 report or an assessment of the family in accordance with priority
9 guidelines established by the Department. The Department may
10 prioritize reports of alleged child abuse or neglect based on the
11 severity and immediacy of the alleged harm to the child. The
12 Department shall adopt a priority system pursuant to rules
13 promulgated by the Department. The primary purpose of the
14 investigation or assessment shall be the protection of the child.
15 For investigations or assessments, the Department shall give special
16 consideration to the risks of any minor, including a child with a
17 disability, who is unable to communicate effectively about abuse,
18 neglect or other safety threat or who is in a vulnerable position
19 due to the inability to communicate effectively.

20 2. If an investigation or assessment conducted by the
21 Department in response to any report of child abuse or neglect shows
22 that the incident reported was the result of the reasonable exercise
23 of parental discipline involving the use of ordinary force,
24 including, but not limited to, spanking, switching, or paddling, the

1 investigation or assessment will proceed no further and all records
2 regarding the incident shall be expunged.

3 B. 1. The investigation or assessment shall include a visit to
4 the home of the child, unless there is reason to believe that there
5 is an extreme safety risk to the child or worker or it appears that
6 the referral has been made in bad faith. The visit shall include an
7 interview with and examination of the subject child and may be
8 conducted at any reasonable time and at any place including, but not
9 limited to, the child's school. The Department shall notify the
10 person responsible for the health, safety, and welfare of the child
11 that the child has been interviewed at a school. The investigation
12 or assessment may include an interview with the parents of the child
13 or any other person responsible for the health, safety, or welfare
14 of the child and an interview with and examination of any child in
15 the home.

16 2. The investigation or assessment may include a medical,
17 psychological, or psychiatric examination of any child in the home.
18 If admission to the home, school, or any place where the child may
19 be located cannot be obtained, then the district court having
20 jurisdiction, upon application by the district attorney and upon
21 cause shown, shall order the person responsible for the health,
22 safety, or welfare of the child, or the person in charge of any
23 place where the child may be located, to allow entrance for the
24 interview, the examination, and the investigation or assessment. If

1 the person responsible for the health, safety, or welfare of the
2 child does not consent to a medical, psychological, or psychiatric
3 examination of the child that is requested by the Department, the
4 district court having jurisdiction, upon application by the district
5 attorney and upon cause shown, shall order the examination to be
6 made at the times and places designated by the court.

7 3. The investigation or assessment may include an inquiry into
8 the possibility that the child or a person responsible for the
9 health, safety, or welfare of the child has a history of mental
10 illness. If the person responsible for the child's health, safety,
11 or welfare does not allow the Department to have access to
12 behavioral health records or treatment plans requested by the
13 Department, which may be relevant to the alleged abuse or neglect,
14 the district court having jurisdiction, upon application by the
15 district attorney and upon good cause shown, shall by order allow
16 the Department to have access to the records pursuant to terms and
17 conditions prescribed by the court.

18 4. a. If the court determines that the subject of the
19 behavioral health records is indigent, the court shall
20 appoint an attorney to represent that person at the
21 hearing to obtain behavioral health records.

22 b. A person responsible for the health, safety, or
23 welfare of the child is entitled to notice and a
24 hearing when the Department seeks a court order to

1 allow a psychological or psychiatric examination or
2 access to behavioral health records.

3 c. Access to behavioral health records does not
4 constitute a waiver of confidentiality.

5 5. The investigation of a report of sexual abuse or serious
6 physical abuse or both sexual abuse and serious physical abuse shall
7 be conducted, when appropriate and possible, using a
8 multidisciplinary team approach as provided by Section 1-9-102 of
9 this title. Law enforcement and the Department shall exchange
10 investigation information.

11 6. The investigation or assessment shall include an inquiry
12 into whether the person responsible for the health, safety or
13 welfare of the child is an active duty service member of the
14 military or the spouse of an active duty service member. The
15 Department shall collect and report information related to the
16 military affiliation of the person or spouse responsible for the
17 health, safety or welfare of the child to the designated federal
18 authorities at the federal military installation where the service
19 member is assigned as provided by paragraph 4 of subsection A of
20 Section 1-2-102 of this title.

21 C. 1. Every physician, surgeon, or other health care provider
22 making a report of abuse or neglect as required by this section or
23 examining a child to determine the likelihood of abuse or neglect
24 and every hospital or related institution in which the child was

1 examined or treated shall provide copies of the results of the
2 examination or copies of the examination on which the report was
3 based and any other clinical notes, x-rays, photographs, and other
4 previous or current records relevant to the case to law enforcement
5 officers conducting a criminal investigation into the case and to
6 employees of the Department conducting an assessment or
7 investigation of alleged abuse or neglect in the case.

8 2. As necessary in the course of conducting an assessment or
9 investigation, the Department may request and obtain, without a
10 court order, copies of all prior medical records of a child
11 including, but not limited to, hospital records, medical, and dental
12 records. The physician-patient privilege shall not constitute
13 grounds for failure to produce such records.

14 D. 1. The Department shall engage in a collaborative decision-
15 making process to address each child's needs related to safety and
16 whether the child's condition warrants a safety intervention.

17 2. If, before the assessment or investigation is complete, the
18 Department determines that immediate removal of the child is
19 necessary to protect the child from further abuse or neglect, the
20 Department shall recommend that the child be taken into custody
21 prior to the emergency custody hearing.

22 E. The Department shall make a complete written report of the
23 investigation. The investigation report, together with its
24 recommendations, shall be submitted to the appropriate district

1 attorney's office. Reports of assessment recommendations shall be
2 submitted to appropriate district attorneys.

3 F. The Department, where appropriate and in its discretion,
4 shall identify prevention- and intervention-related services
5 available in the community and refer the family to or arrange for
6 such services when an investigation or assessment indicates the
7 family would benefit from such services, or the Department may
8 provide such services directly. The Department shall document in
9 the record its attempts to provide, refer or arrange for the
10 provision of voluntary services and shall determine within sixty
11 (60) days whether the family has accessed those services directly
12 related to safety of the child. If the family refuses voluntary
13 services or does not access those services directly related to
14 safety of the child, and it is determined by the Department that the
15 child's surroundings endanger the health, safety, or welfare of the
16 child, the Department may recommend that the child be placed in
17 protective or emergency custody or that a petition be filed.

18 G. If the Department has reason to believe that a person
19 responsible for the health, safety, and welfare of the child may
20 remove the child from the state before the investigation is
21 completed, the Department may request the district attorney to file
22 an application for a temporary restraining order in any district
23 court in the State of Oklahoma without regard to continuing
24 jurisdiction of the child. Upon cause shown, the court may enter a

1 temporary restraining order prohibiting the parent or other person
2 from removing the child from the state pending completion of the
3 assessment or investigation.

4 H. The Director of the Department or designee may request an
5 investigation be conducted by the Oklahoma State Bureau of
6 Investigation or other law enforcement agency in cases where it
7 reasonably believes that criminally injurious conduct including, but
8 not limited to, physical or sexual abuse of a child has occurred.

9 I. Child Welfare Services, in collaboration with the
10 Developmental Disabilities Services Division, shall implement a
11 protocol to be used in cases where the subject child is a child with
12 a disability who has complex medical needs, and the protocol shall
13 include, but not be limited to: resource coordination, medical
14 consultation or medical evaluation, when needed.

15 SECTION 2. AMENDATORY Section 1, Chapter 143, O.S.L.
16 2014, as amended by Section 1, Chapter 189, O.S.L. 2015 (10A O.S.
17 Supp. 2016, Section 1-8-111), is amended to read as follows:

18 Section 1-8-111. A. The Department of Human Services shall
19 provide each youth in its custody ~~sixteen (16)~~ fourteen (14) years
20 and older an annual credit report. The Department shall inform the
21 court with jurisdiction over the youth of any inaccuracies in a
22 credit report displaying evidence of identity theft or any other
23 activity fraudulently made on behalf of the youth in custody. The
24 Department may implement the requirements of this section in stages

1 beginning with youth in the independent living program whose credit
2 rating may inhibit employment and housing opportunities when the
3 child is no longer in custody.

4 B. Within one (1) year of ~~the effective date of this act~~
5 November 1, 2014, the Department of Human Services shall submit
6 annual reports on the implementation of the provisions of this ~~act~~
7 section to the Chair and Vice Chair of the Senate Health and Human
8 Services Committee and the Chair and Vice Chair of the House Human
9 Services Committee. Such reports shall include, but not be limited
10 to, the number of youths in the Department's custody receiving
11 credit score reports, the frequency of such reports, and
12 administrative issues faced by the Department in the implementation
13 of this ~~act~~ section. Such reports shall continue to be issued by
14 the Department until November 1, 2018.

15 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-9-105, is
16 amended to read as follows:

17 Section 1-9-105. A. The Department of Human Services shall
18 carefully define the children and youth programs of the Department
19 as to their purpose, the population served, and performance
20 expectations. Planning for new programs and services and major
21 modifications to existing ones shall include evaluation of their
22 effect on other programs and services and communication and
23 coordination with other public and private children and youth
24 service providers in order to assure successful and cost-effective

1 implementation of the program. An evaluation component that
2 includes monitoring and evaluation of client outcomes shall be
3 incorporated into all of the Department's programs and services to
4 children and youth, whether provided directly by the agency or
5 through a contract.

6 1. All programs and services shall be designed to ensure the
7 accessibility of the program to the persons served. Provision for
8 transportation, child care and similar services necessary in order
9 to assist persons to access the services shall be made. If the
10 service is provided in an office setting, the service shall be
11 available during the evening.

12 2. Programs and services shall be targeted to the areas of the
13 state having the greatest need for them. The programs and services
14 shall be designed to meet the needs of the area in which they are
15 located. Programs and services intended for statewide
16 implementation shall be implemented first in those areas that have
17 the greatest need for them.

18 3. As a part of the Department's program planning and
19 monitoring processes, the Department shall examine its programs and
20 services to children and youth to ensure that the practices within
21 them do not operate to detriment of minority children and youth.

22 4. All child care services and facilities operated by the
23 Department shall be accredited by the National Council on
24 Accreditation, when applicable.

1 B. The Department shall develop a five-year plan for children
2 and youth services provided by the agency. The plan shall be
3 reviewed annually and modified as necessary. Agency budget
4 recommendations of the Department for services to children and youth
5 shall be based upon documented needs, and the development of budget
6 recommendations and priorities shall be closely integrated with
7 agency and interagency program planning and management.

8 C. The Department shall annually review its programs and
9 services and submit a report to the Governor, the Speaker of the
10 House of Representatives, the President Pro Tempore of the Senate,
11 and the Supreme Court of the State of Oklahoma, analyzing and
12 evaluating the effectiveness of the programs and services being
13 carried out by the Department. Such report shall include, but not
14 be limited to:

15 1. An analysis and evaluation of programs and services
16 continued, established and discontinued during the period covered by
17 the report;

18 2. A description of programs and services which should be
19 implemented;

20 3. Statutory changes necessary;

21 4. Relevant information concerning the number of children in
22 the Department's custody during the period covered by the report;
23 and
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1 5. Such other information as will enable a user of the report
2 to ascertain the effectiveness of the Department's programs and
3 services.

4 D. The Department shall annually submit a report to the
5 Governor, President Pro Tempore of the Senate, Speaker of the House
6 of Representatives and the Oklahoma Supreme Court which shall
7 include:

8 1. Information concerning the number of children in the
9 Department's custody that are placed in non-family settings,
10 including but not limited to the types of settings utilized and the
11 duration of the children's stays in such settings;

12 2. A census of approved foster homes and the number of children
13 placed in those homes and a comparative review of foster home room
14 and board rates; and

15 3. Information concerning child welfare staff workloads and
16 comparative salaries for such staff.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-9-116.1 of Title 10A, unless
19 there is created a duplication in numbering, reads as follows:

20 A foster parent who is acting in good faith and pursuant to the
21 reasonable and prudent parent standard shall not be liable for
22 property damage or injuries caused by the child or injuries to the
23 child placed in his or her care when the child engages in
24 appropriate activities and such damage or injuries results from the

1 inherent risks typically associated with such activities. Nothing
2 in this section shall prevent or limit the liability of a foster
3 parent if the foster parent commits an act or omission that
4 constitutes willful or wanton disregard for the safety of the child
5 or other persons or their property, and that act or omission caused
6 the damage or injuries.

7 SECTION 5. AMENDATORY 10A O.S. 2011, Section 1-9-119, as
8 last amended by Section 4, Chapter 257, O.S.L. 2014 (10A O.S. Supp.
9 2016, Section 1-9-119), is amended to read as follows:

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

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

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

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

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

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

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

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

10 8. Be notified of scheduled review meetings, permanency
11 planning meetings, family team meetings and special staffing
12 concerning the foster child in the foster parent's home in order to
13 actively participate in the case planning and decision-making
14 process regarding the child;

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

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

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

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

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

13 14. a. Be given written notice of:

14 (1) plans to terminate the placement of the child
15 with the foster parent pursuant to Section 1-4-
16 805 of this title, and

17 (2) the reasons for the changes or termination in
18 placement-1

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

21 15. Be notified by the applicable state agency in a timely and
22 complete manner of all court hearings, including notice of the date
23 and time of any court hearing, the name of the judge or hearing
24

1 officer hearing the case, the location of the hearing, and the court
2 docket number of the case;

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

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

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

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

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

17 21. Have timely access to the appeals process of the state
18 agency and child placement agency and the right to be free from acts
19 of harassment and retaliation by any other party when exercising the
20 right to appeal;

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

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

1 24. Receive a copy of the liability insurance policy the
2 Department of Human Services maintains for every Department-
3 contracted foster home placement.

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

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

11 SECTION 6. This act shall become effective November 1, 2017.

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