

1 ENGROSSED SENATE
2 BILL NO. 727

By: Griffin of the Senate

3 and

4 Ownbey of the House
5

6 An Act relating to foster care; amending 10A O.S.
7 2011, Section 1-2-105, as last amended by Section 2,
8 Chapter 130, O.S.L. 2016 (10A O.S. Supp. 2016,
9 Section 1-2-105), which relates to investigations of
10 abuse or neglect; directing collaboration for certain
11 decisions; providing timeline for removal; amending
12 Section 1, Chapter 143, O.S.L. 2014, as amended by
13 Section 1, Chapter 189, O.S.L. 2015 (10A O.S. Supp.
14 2016, Section 1-8-111), which relates to annual
15 credit report for youth in custody; reducing age of
16 youth in custody of the Department that shall be
17 provided with an annual credit report; clarifying
18 language; amending 10A O.S. 2011, Section 1-9-105,
19 which relates to program planning and monitoring;
20 requiring certain report; specifying delivery of
21 report; stipulating contents; eliminating liability
22 for foster parents for property damage or injuries in
23 certain circumstances; providing certain acts and
24 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.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

16 2. If an investigation or assessment conducted by the
17 Department in response to any report of child abuse or neglect shows
18 that the incident reported was the result of the reasonable exercise
19 of parental discipline involving the use of ordinary force,
20 including, but not limited to, spanking, switching, or paddling, the
21 investigation or assessment will proceed no further and all records
22 regarding the incident shall be expunged.

23 B. 1. The investigation or assessment shall include a visit to
24 the home of the child, unless there is reason to believe that there

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

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

1 attorney and upon cause shown, shall order the examination to be
2 made at the times and places designated by the court.

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

14 4. a. If the court determines that the subject of the
15 behavioral health records is indigent, the court shall
16 appoint an attorney to represent that person at the
17 hearing to obtain behavioral health records.

18 b. A person responsible for the health, safety, or
19 welfare of the child is entitled to notice and a
20 hearing when the Department seeks a court order to
21 allow a psychological or psychiatric examination or
22 access to behavioral health records.

23 c. Access to behavioral health records does not
24 constitute a waiver of confidentiality.

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

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

17 C. 1. Every physician, surgeon, or other health care provider
18 making a report of abuse or neglect as required by this section or
19 examining a child to determine the likelihood of abuse or neglect
20 and every hospital or related institution in which the child was
21 examined or treated shall provide copies of the results of the
22 examination or copies of the examination on which the report was
23 based and any other clinical notes, x-rays, photographs, and other
24 previous or current records relevant to the case to law enforcement

1 officers conducting a criminal investigation into the case and to
2 employees of the Department conducting an assessment or
3 investigation of alleged abuse or neglect in the case.

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

10 D. 1. The Department shall engage in a collaborative decision-
11 making process to address each child's needs related to safety and
12 whether the child's condition warrants a safety intervention
13 including but not limited to a change in placement, and:

14 a. those involved in the collaborative decision-making
15 process shall include at a minimum appropriate
16 Department staff, the parents of the child and, if the
17 parent requests, an advocate or representative,

18 b. to protect the safety of those involved and to promote
19 efficiency, the Department may limit participants as
20 determined to be in the best interests of the child,

21 c. the Department shall make reasonable efforts to
22 provide a trained facilitator to guide the decision-
23 making process, and
24

1 d. any determination that a collaborative decision-making
2 process is not possible or is unnecessary shall
3 require supervisor approval and documentation of the
4 reasons supporting the determination;

5 2. If, before the assessment or investigation is complete, the
6 Department determines that immediate removal of the child is
7 necessary to protect the child from further abuse or neglect, the
8 Department shall recommend that the child be taken into custody and,
9 if feasible, utilize the collaborative decision-making process
10 provided by paragraph 1 of this subsection prior to the emergency
11 custody hearing.

12 E. The Department shall make a complete written report of the
13 investigation. The investigation report, together with its
14 recommendations, shall be submitted to the appropriate district
15 attorney's office. Reports of assessment recommendations shall be
16 submitted to appropriate district attorneys.

17 F. The Department, where appropriate and in its discretion,
18 shall identify prevention- and intervention-related services
19 available in the community and refer the family to or arrange for
20 such services when an investigation or assessment indicates the
21 family would benefit from such services, or the Department may
22 provide such services directly. The Department shall document in
23 the record its attempts to provide, refer or arrange for the
24 provision of voluntary services and shall determine within sixty

1 (60) days whether the family has accessed those services directly
2 related to safety of the child. If the family refuses voluntary
3 services or does not access those services directly related to
4 safety of the child, and it is determined by the Department that the
5 child's surroundings endanger the health, safety, or welfare of the
6 child, the Department may recommend that the child be placed in
7 protective or emergency custody or that a petition be filed.

8 G. If the Department has reason to believe that a person
9 responsible for the health, safety, and welfare of the child may
10 remove the child from the state before the investigation is
11 completed, the Department may request the district attorney to file
12 an application for a temporary restraining order in any district
13 court in the State of Oklahoma without regard to continuing
14 jurisdiction of the child. Upon cause shown, the court may enter a
15 temporary restraining order prohibiting the parent or other person
16 from removing the child from the state pending completion of the
17 assessment or investigation.

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

23 I. Child Welfare Services, in collaboration with the
24 Developmental Disabilities Services Division, shall implement a

1 protocol to be used in cases where the subject child is a child with
2 a disability who has complex medical needs, and the protocol shall
3 include, but not be limited to: resource coordination, medical
4 consultation or medical evaluation, when needed.

5 SECTION 2. AMENDATORY Section 1, Chapter 143, O.S.L.
6 2014, as amended by Section 1, Chapter 189, O.S.L. 2015 (10A O.S.
7 Supp. 2016, Section 1-8-111), is amended to read as follows:

8 Section 1-8-111. A. The Department of Human Services shall
9 provide each youth in its custody ~~sixteen (16)~~ fourteen (14) years
10 and older an annual credit report. The Department shall inform the
11 court with jurisdiction over the youth of any inaccuracies in a
12 credit report displaying evidence of identity theft or any other
13 activity fraudulently made on behalf of the youth in custody. The
14 Department may implement the requirements of this section in stages
15 beginning with youth in the independent living program whose credit
16 rating may inhibit employment and housing opportunities when the
17 child is no longer in custody.

18 B. Within one (1) year of ~~the effective date of this act~~
19 November 1, 2014, the Department of Human Services shall submit
20 annual reports on the implementation of the provisions of this ~~act~~
21 section to the Chair and Vice Chair of the Senate Health and Human
22 Services Committee and the Chair and Vice Chair of the House Human
23 Services Committee. Such reports shall include, but not be limited
24 to, the number of youths in the Department's custody receiving

1 credit score reports, the frequency of such reports, and
2 administrative issues faced by the Department in the implementation
3 of this ~~act~~ section. Such reports shall continue to be issued by
4 the Department until November 1, 2018.

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

7 Section 1-9-105. A. The Department of Human Services shall
8 carefully define the children and youth programs of the Department
9 as to their purpose, the population served, and performance
10 expectations. Planning for new programs and services and major
11 modifications to existing ones shall include evaluation of their
12 effect on other programs and services and communication and
13 coordination with other public and private children and youth
14 service providers in order to assure successful and cost-effective
15 implementation of the program. An evaluation component that
16 includes monitoring and evaluation of client outcomes shall be
17 incorporated into all of the Department's programs and services to
18 children and youth, whether provided directly by the agency or
19 through a contract.

20 1. All programs and services shall be designed to ensure the
21 accessibility of the program to the persons served. Provision for
22 transportation, child care and similar services necessary in order
23 to assist persons to access the services shall be made. If the
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1 service is provided in an office setting, the service shall be
2 available during the evening.

3 2. Programs and services shall be targeted to the areas of the
4 state having the greatest need for them. The programs and services
5 shall be designed to meet the needs of the area in which they are
6 located. Programs and services intended for statewide
7 implementation shall be implemented first in those areas that have
8 the greatest need for them.

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

13 4. All child care services and facilities operated by the
14 Department shall be accredited by the National Council on
15 Accreditation, when applicable.

16 B. The Department shall develop a five-year plan for children
17 and youth services provided by the agency. The plan shall be
18 reviewed annually and modified as necessary. Agency budget
19 recommendations of the Department for services to children and youth
20 shall be based upon documented needs, and the development of budget
21 recommendations and priorities shall be closely integrated with
22 agency and interagency program planning and management.

23 C. The Department shall annually review its programs and
24 services and submit a report to the Governor, the Speaker of the

1 House of Representatives, the President Pro Tempore of the Senate,
2 and the Supreme Court of the State of Oklahoma, analyzing and
3 evaluating the effectiveness of the programs and services being
4 carried out by the Department. Such report shall include, but not
5 be limited to:

6 1. An analysis and evaluation of programs and services
7 continued, established and discontinued during the period covered by
8 the report;

9 2. A description of programs and services which should be
10 implemented;

11 3. Statutory changes necessary;

12 4. Relevant information concerning the number of children in
13 the Department's custody during the period covered by the report;
14 and

15 5. Such other information as will enable a user of the report
16 to ascertain the effectiveness of the Department's programs and
17 services.

18 D. The Department shall, on or before January 31 of each year,
19 submit a report to the Governor, President Pro Tempore of the
20 Senate, Speaker of the House of Representatives and the Oklahoma
21 Supreme Court which shall include:

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

3 2. A census of approved foster homes and the number of children
4 placed in those homes and a comparative review of foster home room
5 and board rates; and

6 3. Information concerning child welfare staff workloads and
7 comparative salaries for such staff.

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

11 A foster parent who is acting in good faith and pursuant to the
12 reasonable and prudent parent standard shall not be liable for
13 property damage or injuries caused by the child or injuries to the
14 child placed in his or her care when the child engages in
15 appropriate activities and such damage or injuries results from the
16 inherent risks typically associated with such activities. Nothing
17 in this section shall prevent or limit the liability of a foster
18 parent if the foster parent commits an act or omission that
19 constitutes willful or wanton disregard for the safety of the child
20 or other persons or their property, and that act or omission caused
21 the damage or injuries.

22 SECTION 5. AMENDATORY 10A O.S. 2011, Section 1-9-119, as
23 last amended by Section 4, Chapter 257, O.S.L. 2014 (10A O.S. Supp.
24 2016, Section 1-9-119), is amended to read as follows:

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

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

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

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

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

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

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

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

1 8. Be notified of scheduled review meetings, permanency
2 planning meetings, family team meetings and special staffing
3 ~~concerning the~~ concerns for any foster child placed in the foster
4 parent's home in order to actively participate in the case planning
5 and decision-making process regarding the child;

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

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

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

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

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

4 14. a. Be given written notice of:

- 5 (1) plans to terminate the placement of the child
6 with the foster parent pursuant to Section 1-4-
7 805 of this title, and
8 (2) the reasons for the changes or termination in
9 placement~~7,1~~

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

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

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

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

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

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

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

8 21. Have timely access to the appeals process of the state
9 agency and child placement agency and the right to be free from acts
10 of harassment and retaliation by any other party when exercising the
11 right to appeal;

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

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

16 24. Receive a copy of the liability insurance policy the
17 Department of Human Services maintains for every Department-
18 contracted foster home placement.

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

22 C. Nothing in this section shall be construed to create a
23 private right of action or claim on the part of any individual, the
24

1 Department, the Office of Juvenile Affairs, or any child-placing
2 agency.

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

4 Passed the Senate the 22nd day of March, 2017.

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Presiding Officer of the Senate

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8 Passed the House of Representatives the ____ day of _____,
9 2017.

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Presiding Officer of the House
of Representatives

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