

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 828

By: Smalley

AS INTRODUCED

An Act relating to child neglect; amending 10A O.S. 2011, Sections 1-1-105, as last amended by Section 1, Chapter 256, O.S.L. 2018 and 1-4-201, as amended by Section 3, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2018, Sections 1-1-105 and 1-4-201), which relate to definitions and circumstances authorizing taking child into custody; adding definition of situational neglect; prohibiting removal of child from custody under certain situations; authorizing recommendations for certain in-home placement; requiring assistance in obtaining certain services; 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 1, Chapter 256, O.S.L. 2018 (10A O.S. Supp. 2018, 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

- 1 b. the failure to maintain a significant parental
2 relationship with a child through visitation or
3 communication in which incidental or token visits or
4 communication are not considered significant, or
5 c. the failure to respond to notice of deprived
6 proceedings;

7 2. "Abuse" means harm or threatened harm to the health, safety,
8 or welfare of a child by a person responsible for the child's
9 health, safety, or welfare, including but not limited to
10 nonaccidental physical or mental injury, sexual abuse, or sexual
11 exploitation. Provided, however, that nothing contained in the
12 Oklahoma Children's Code shall prohibit any parent from using
13 ordinary force as a means of discipline including, but not limited
14 to, spanking, switching, or paddling.

- 15 a. "Harm or threatened harm to the health or safety of a
16 child" means any real or threatened physical, mental,
17 or emotional injury or damage to the body or mind that
18 is not accidental including but not limited to sexual
19 abuse, sexual exploitation, neglect, or dependency.
20 b. "Sexual abuse" includes but is not limited to rape,
21 incest, and lewd or indecent acts or proposals made to
22 a child, as defined by law, by a person responsible
23 for the health, safety, or welfare of the child.
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1 c. "Sexual exploitation" includes but is not limited to
2 allowing, permitting, encouraging, or forcing a child
3 to engage in prostitution, as defined by law, by any
4 person eighteen (18) years of age or older or by a
5 person responsible for the health, safety, or welfare
6 of a child, or allowing, permitting, encouraging, or
7 engaging in the lewd, obscene, or pornographic, as
8 defined by law, photographing, filming, or depicting
9 of a child in those acts by a person responsible for
10 the health, safety, and welfare of the child;

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

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

16 5. "Age-appropriate or developmentally appropriate" means:

17 a. activities or items that are generally accepted as
18 suitable for children of the same age or level of
19 maturity or that are determined to be developmentally
20 appropriate for a child, based on the development of
21 cognitive, emotional, physical, and behavioral
22 capacities that are typical for an age or age group,
23 and
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1 b. in the case of a specific child, activities or items
2 that are suitable for that child based on the
3 developmental stages attained by the child with
4 respect to the cognitive, emotional, physical, and
5 behavioral capacities of the specific child.

6 In the event that any age-related activities have implications
7 relative to the academic curriculum of a child, nothing in this
8 paragraph shall be construed to authorize an officer or employee of
9 the federal government to mandate, direct, or control a state or
10 local educational agency, or the specific instructional content,
11 academic achievement standards and assessments, curriculum, or
12 program of instruction of a school;

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

17 7. "Behavioral health" means mental health, substance abuse, or
18 co-occurring mental health and substance abuse diagnoses, and the
19 continuum of mental health, substance abuse, or co-occurring mental
20 health and substance abuse treatment;

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

23 9. "Child advocacy center" means a center and the
24 multidisciplinary child abuse team of which it is a member that is

1 accredited by the National Children's Alliance or that is completing
2 a sixth year of reaccreditation. Child advocacy centers shall be
3 classified, based on the child population of a district attorney's
4 district, as follows:

- 5 a. nonurban centers in districts with child populations
6 that are less than sixty thousand (60,000), and
- 7 b. midlevel nonurban centers in districts with child
8 populations equal to or greater than sixty thousand
9 (60,000), but not including Oklahoma and Tulsa
10 counties;

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

15 11. "Child-placing agency" means an agency that arranges for or
16 places a child in a foster family home, group home, adoptive home,
17 or a successful adulthood program;

18 12. "Children's emergency resource center" means a community-
19 based program that may provide emergency care and a safe and
20 structured homelike environment or a host home for children
21 providing food, clothing, shelter and hygiene products to each child
22 served; after-school tutoring; counseling services; life-skills
23 training; transition services; assessments; family reunification;
24 respite care; transportation to or from school, doctors'

1 appointments, visitations and other social, school, court or other
2 activities when necessary; and a stable environment for children in
3 crisis who are in custody of the Department of Human Services if
4 permitted under the Department's policies and regulations, or who
5 have been voluntarily placed by a parent or custodian during a
6 temporary crisis;

7 13. "Community-based services" or "community-based programs"
8 means services or programs which maintain community participation or
9 supervision in their planning, operation, and evaluation.

10 Community-based services and programs may include, but are not
11 limited to, emergency shelter, crisis intervention, group work, case
12 supervision, job placement, recruitment and training of volunteers,
13 consultation, medical, educational, home-based services, vocational,
14 social, preventive and psychological guidance, training, counseling,
15 early intervention and diversionary substance abuse treatment,
16 sexual abuse treatment, transitional living, independent living, and
17 other related services and programs;

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

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

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

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

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

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

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

23 21. "Deprived child" means a child:
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- 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-

1 threatening medical condition in order to cause or
2 allow the death of the child if such nutrition or
3 medical treatment is generally provided to similarly
4 situated children without a disability or children
5 with disabilities; provided that no medical treatment
6 shall be necessary if, in the reasonable medical
7 judgment of the attending physician, such treatment
8 would be futile in saving the life of the child,

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

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

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

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

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

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

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

16 23. "Drug-endangered child" means a child who is at risk of
17 suffering physical, psychological or sexual harm as a result of the
18 use, possession, distribution, manufacture or cultivation of
19 controlled substances, or the attempt of any of these acts, by a
20 person responsible for the health, safety or welfare of the child,
21 as defined in this section. This term includes circumstances
22 wherein the substance abuse of the person responsible for the
23 health, safety or welfare of the child interferes with that person's
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1 ability to parent and provide a safe and nurturing environment for
2 the child;

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

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

13 26. "Failure to protect" means failure to take reasonable
14 action to remedy or prevent child abuse or neglect, and includes the
15 conduct of a non-abusing parent or guardian who knows the identity
16 of the abuser or the person neglecting the child, but lies, conceals
17 or fails to report the child abuse or neglect or otherwise take
18 reasonable action to end the abuse or neglect;

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

1 28. "Foster family home" means the private residence of a
2 foster parent who provides foster care services to a child. Such
3 term shall include a nonkinship foster family home, a therapeutic
4 foster family home, or the home of a relative or other kinship care
5 home;

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

13 30. "Guardian ad litem" means a person appointed by the court
14 pursuant to the provisions of Section 1-4-306 of this title having
15 those duties and responsibilities as set forth in that section. The
16 term "guardian ad litem" shall refer to a court-appointed special
17 advocate as well as to any other person appointed pursuant to the
18 provisions of Section 1-4-306 of this title to serve as a guardian
19 ad litem;

20 31. "Guardian ad litem of the estate of the child" means a
21 person appointed by the court to protect the property interests of a
22 child pursuant to Section 1-8-108 of this title;
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1 32. "Group home" means a residential facility licensed by the
2 Department to provide full-time care and community-based services
3 for more than five but fewer than thirteen children;

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

9 34. "Heinous and shocking abuse" includes, but is not limited
10 to, aggravated physical abuse that results in serious bodily,
11 mental, or emotional injury. "Serious bodily injury" means injury
12 that involves:

- 13 a. a substantial risk of death,
- 14 b. extreme physical pain,
- 15 c. protracted disfigurement,
- 16 d. a loss or impairment of the function of a body member,
17 organ, or mental faculty,
- 18 e. an injury to an internal or external organ or the
19 body,
- 20 f. a bone fracture,
- 21 g. sexual abuse or sexual exploitation,
- 22 h. chronic abuse including, but not limited to, physical,
23 emotional, or sexual abuse, or sexual exploitation
24 which is repeated or continuing,

- 1 i. torture that includes, but is not limited to,
2 inflicting, participating in or assisting in
3 inflicting intense physical or emotional pain upon a
4 child repeatedly over a period of time for the purpose
5 of coercing or terrorizing a child or for the purpose
6 of satisfying the craven, cruel, or prurient desires
7 of the perpetrator or another person, or
8 j. any other similar aggravated circumstance;

9 35. "Heinous and shocking neglect" includes, but is not limited
10 to:

- 11 a. chronic neglect that includes, but is not limited to,
12 a persistent pattern of family functioning in which
13 the caregiver has not met or sustained the basic needs
14 of a child which results in harm to the child,
15 b. neglect that has resulted in a diagnosis of the child
16 as a failure to thrive,
17 c. an act or failure to act by a parent that results in
18 the death or near death of a child or sibling, serious
19 physical or emotional harm, sexual abuse, sexual
20 exploitation, or presents an imminent risk of serious
21 harm to a child, or
22 d. any other similar aggravating circumstance;

23 36. "Individualized service plan" means a document written
24 pursuant to Section 1-4-704 of this title that has the same meaning

1 as "service plan" or "treatment plan" where those terms are used in
2 the Oklahoma Children's Code;

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

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

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

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

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

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

18 (1) "substantiated" means the Department has
19 determined, after an investigation of a report of
20 child abuse or neglect and based upon some
21 credible evidence, that child abuse or neglect
22 has occurred. When child abuse or neglect is
23 substantiated, the Department may recommend:
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1 (a) court intervention if the Department finds
2 the health, safety, or welfare of the child
3 is threatened, or

4 (b) child abuse and neglect prevention- and
5 intervention-related services for the child,
6 parents or persons responsible for the care
7 of the child if court intervention is not
8 determined to be necessary,

9 (2) "unsubstantiated" means the Department has
10 determined, after an investigation of a report of
11 child abuse or neglect, that insufficient
12 evidence exists to fully determine whether child
13 abuse or neglect has occurred. If child abuse or
14 neglect is unsubstantiated, the Department may
15 recommend, when determined to be necessary, that
16 the parents or persons responsible for the care
17 of the child obtain child abuse and neglect
18 prevention- and intervention-related services, or

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

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

3 41. "Kinship guardianship" means a permanent guardianship as
4 defined in this section;

5 42. "Kinship relation" or "kinship relationship" means
6 relatives, stepparents, or other responsible adults who have a bond
7 or tie with a child and/or to whom has been ascribed a family
8 relationship role with the child's parents or the child; provided,
9 however, in cases where the Indian Child Welfare Act applies, the
10 definitions contained in 25 U.S.C., Section 1903 shall control;

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

14 44. "Minor" means the same as the term "child" as defined in
15 this section;

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

19 46. "Multidisciplinary child abuse team" means any team
20 established pursuant to Section 1-9-102 of this title of three or
21 more persons who are trained in the prevention, identification,
22 investigation, prosecution, and treatment of physical and sexual
23 child abuse and who are qualified to facilitate a broad range of
24 prevention- and intervention-related services and services related

1 to child abuse. For purposes of this definition, "freestanding"
2 means a team not used by a child advocacy center for its
3 accreditation;

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

7 48. "Neglect" means:

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

- 10 (1) adequate nurturance and affection, food,
11 clothing, shelter, sanitation, hygiene, or
12 appropriate education,
13 (2) medical, dental, or behavioral health care,
14 (3) supervision or appropriate caretakers, or
15 (4) special care made necessary by the physical or
16 mental condition of the child,

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

- 19 (1) the use, possession, sale, or manufacture of
20 illegal drugs,
21 (2) illegal activities, or
22 (3) sexual acts or materials that are not age-
23 appropriate, or

24 c. abandonment.

1 Nothing in this paragraph shall be construed to mean a child is
2 abused or neglected for the sole reason the parent, legal guardian
3 or person having custody or control of a child, in good faith,
4 selects and depends upon spiritual means alone through prayer, in
5 accordance with the tenets and practice of a recognized church or
6 religious denomination, for the treatment or cure of disease or
7 remedial care of such child. Nothing contained in this paragraph
8 shall prevent a court from immediately assuming custody of a child,
9 pursuant to the Oklahoma Children's Code, and ordering whatever
10 action may be necessary, including medical treatment, to protect the
11 child's health or welfare;

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

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

18 51. "Permanent guardianship" means a judicially created
19 relationship between a child, a kinship relation of the child, or
20 other adult established pursuant to the provisions of Section 1-4-
21 709 of this title;

22 52. "Person responsible for a child's health, safety, or
23 welfare" includes a parent; a legal guardian; custodian; a foster
24 parent; a person eighteen (18) years of age or older with whom the

1 child's parent cohabitates or any other adult residing in the home
2 of the child; an agent or employee of a public or private
3 residential home, institution, facility or day treatment program as
4 defined in Section 175.20 of Title 10 of the Oklahoma Statutes; or
5 an owner, operator, or employee of a child care facility as defined
6 by Section 402 of Title 10 of the Oklahoma Statutes;

7 53. "Plan of safe care" means a plan developed for an infant
8 with Neonatal Abstinence Syndrome or a Fetal Alcohol Spectrum
9 Disorder upon release from the care of a health care provider that
10 addresses the health and substance use treatment needs of the infant
11 and mother or caregiver;

12 54. "Protective custody" means custody of a child taken by a
13 law enforcement officer or designated employee of the court without
14 a court order;

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

17 56. "Reasonable and prudent parent standard" means the standard
18 characterized by careful and sensible parental decisions that
19 maintain the health, safety, and best interests of a child while at
20 the same time encouraging the emotional and developmental growth of
21 the child. This standard shall be used by the child's caregiver
22 when determining whether to allow a child to participate in
23 extracurricular, enrichment, cultural, and social activities. For
24 purposes of this definition, the term "caregiver" means a foster
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1 parent with whom a child in foster care has been placed, a
2 representative of a group home where a child has been placed or a
3 designated official for a residential child care facility where a
4 child in foster care has been placed;

5 57. "Relative" means a grandparent, great-grandparent, brother
6 or sister of whole or half blood, aunt, uncle or any other person
7 related to the child;

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

11 59. "Review hearing" means a hearing by the court pursuant to
12 Section 1-4-807 of this title;

13 60. "Risk" means the likelihood that an incident of child abuse
14 or neglect will occur in the future;

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

20 62. "Safety analysis" means action taken by the Department in
21 response to a report of alleged child abuse or neglect that may
22 include an assessment or investigation based upon an analysis of the
23 information received according to priority guidelines and other
24 criteria adopted by the Department;

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

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

11 65. "Sibling" means a biologically or legally related brother
12 or sister of a child. This includes an individual who satisfies at
13 least one of the following conditions with respect to a child:

- 14 a. the individual is considered by state law to be a
15 sibling of the child, or
- 16 b. the individual would have been considered a sibling
17 under state law but for a termination or other
18 disruption of parental rights, such as the death of a
19 parent;

20 66. "Situational neglect" means neglect that occurs because of
21 a specific situation or crisis that only lasts a limited period of
22 time including, but not limited to, bereavement or loss of
23 employment;
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1 67. "Specialized foster care" means foster care provided to a
2 child in a foster home or agency-contracted home which:

- 3 a. has been certified by the Developmental Disabilities
- 4 Services Division of the Department of Human Services,
- 5 b. is monitored by the Division, and
- 6 c. is funded through the Home- and Community-Based Waiver
- 7 Services Program administered by the Division;

8 ~~67.~~ 68. "Successful adulthood program" means a program
9 specifically designed to assist a child to enhance those skills and
10 abilities necessary for successful adult living. A successful
11 adulthood program may include, but shall not be limited to, such
12 features as minimal direct staff supervision, and the provision of
13 supportive services to assist children with activities necessary for
14 finding an appropriate place of residence, completing an education
15 or vocational training, obtaining employment, or obtaining other
16 similar services;

17 ~~68.~~ 69. "Temporary custody" means court-ordered custody of an
18 adjudicated deprived child;

19 ~~69.~~ 70. "Therapeutic foster family home" means a foster family
20 home which provides specific treatment services, pursuant to a
21 therapeutic foster care contract, which are designed to remedy
22 social and behavioral problems of a foster child residing in the
23 home;

1 ~~70.~~ 71. "Trafficking in persons" means sex trafficking or
2 severe forms of trafficking in persons as described in Section 7102
3 of Title 22 of the United States Code:

4 a. "sex trafficking" means the recruitment, harboring,
5 transportation, provision, obtaining, patronizing or
6 soliciting of a person for the purpose of a commercial
7 sex act, and

8 b. "severe forms of trafficking in persons" means:

9 (1) sex trafficking in which a commercial sex act is
10 induced by force, fraud, or coercion, or in which
11 the person induced to perform such act has not
12 attained eighteen (18) years of age, or

13 (2) the recruitment, harboring, transportation,
14 provision, obtaining, patronizing or soliciting
15 of a person for labor or services, through the
16 use of force, fraud, or coercion for the purpose
17 of subjection to involuntary servitude, peonage,
18 debt bondage, or slavery;

19 ~~71.~~ 72. "Transitional living program" means a residential
20 program that may be attached to an existing facility or operated
21 solely for the purpose of assisting children to develop the skills
22 and abilities necessary for successful adult living. The program
23 may include, but shall not be limited to, reduced staff supervision,
24 vocational training, educational services, employment and employment

1 training, and other appropriate independent living skills training
2 as a part of the transitional living program; and

3 ~~72.~~ 73. "Voluntary foster care placement" means the temporary
4 placement of a child by the parent, legal guardian or custodian of
5 the child in foster care pursuant to a signed placement agreement
6 between the Department or a child-placing agency and the child's
7 parent, legal guardian or custodian.

8 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-201, as
9 amended by Section 3, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2018,
10 Section 1-4-201), is amended to read as follows:

11 Section 1-4-201. A. Pursuant to the provisions of this
12 section, a child may be taken into custody prior to the filing of a
13 petition:

14 1. By a peace officer or employee of the court, without a court
15 order if the officer or employee has reasonable suspicion that:

16 a. the child is in need of immediate protection due to an
17 imminent safety threat,

18 b. the circumstances or surroundings of the child are
19 such that continuation in the child's home or in the
20 care or custody of the parent, legal guardian, or
21 custodian would present an imminent safety threat to
22 the child, or

23 c. the child, including a child with a disability, is
24 unable to communicate effectively about abuse, neglect
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1 or other safety threat or is in a vulnerable position
2 due to the inability to communicate effectively and
3 the child is in need of immediate protection due to an
4 imminent safety threat; or

5 2. By an order of the district court issued upon the
6 application of the office of the district attorney. The application
7 presented by the district attorney may be supported by a sworn
8 affidavit which may be based upon information and belief. The
9 application shall state facts sufficient to demonstrate to the court
10 that a continuation of the child in the home or with the caretaker
11 of the child is contrary to the child's welfare and there is
12 reasonable suspicion that:

- 13 a. the child is in need of immediate protection due to an
14 imminent safety threat,
- 15 b. the circumstances or surroundings of the child are
16 such that continuation in the child's home or in the
17 care or custody of the parent, legal guardian, or
18 custodian would present an imminent safety threat to
19 the child, or
- 20 c. the child, including a child with a disability, is
21 unable to communicate effectively about abuse, neglect
22 or other safety threat or is in a vulnerable position
23 due to the inability to communicate effectively and
24

1 the child is in need of immediate protection due to an
2 imminent safety threat.

3 The application and order may be verbal and upon being advised by
4 the district attorney or the court of the verbal order, law
5 enforcement shall act on such order. If verbal, the district
6 attorney shall submit a written application and proposed order to
7 the district court within one (1) judicial day from the issuance of
8 the verbal order. Upon approval, the application and order shall be
9 filed with the court clerk; or

10 3. By order of the district court when the child is in need of
11 medical or behavioral health treatment in order to protect the
12 health, safety, or welfare of the child and the parent, legal
13 guardian, or custodian of the child is unwilling or unavailable to
14 consent to such medical or behavioral health treatment or other
15 action, the court shall specifically include in the emergency order
16 authorization for such medical or behavioral health evaluation or
17 treatment as it deems necessary.

18 B. 1. By January 1, 2010, the Department in consultation with
19 law enforcement and the district courts shall develop and implement
20 a system for joint response when a child is taken into protective
21 custody by a peace officer pursuant to paragraph 1 of subsection A
22 of this section. The system shall include:
23
24
25

- a. designation of persons to serve as contact points for peace officers, including at least one backup contact for each initial contact point,
- b. a protocol for conducting a safety evaluation at the scene where protective custody is assumed to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody,
- c. the development of reception centers for accepting protective custody of children from peace officers when the Department is unable to respond at the scene within a reasonable time period,
- d. a protocol for conducting a safety evaluation at the reception center within twenty-three (23) hours of the assumption of protective custody of a child to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody, and
- e. a protocol, when the child cannot safely be left in the home, for transporting a child to the home of a relative, kinship care home, an emergency foster care home, a shelter, or any other site at which the

1 Department believes the child can be protected,
2 provided that the Department shall utilize a shelter
3 only when the home of a relative, kinship care home,
4 or emergency foster care home is unavailable or
5 inappropriate.

6 2. Beginning January 1, 2010, no child taken into protective
7 custody under paragraph 1 of subsection A of this section shall be
8 considered to be in the emergency custody of the Department until
9 the Department has completed a safety evaluation and has concluded
10 that the child faces an imminent safety threat and the court has
11 issued an order for emergency custody.

12 3. If the safety evaluation performed by the Department of a
13 child taken into protective custody under paragraph 1 of subsection
14 A of this section indicates that the child does not face an imminent
15 safety threat, the Department shall restore the child to the custody
16 and control of the parent, legal guardian, or custodian of the
17 child.

18 C. When an order issued by the district court pursuant to
19 subsection A of this section places the child in the emergency
20 custody of the Department of Human Services pending further hearing
21 specified by Section 1-4-203 of this title, an employee of the
22 Department may execute such order and physically take the child into
23 custody in the following limited circumstance:
24

1 1. The child is located in a hospital, school, or day care
2 facility; and

3 2. It is believed that assumption of the custody of the child
4 from the facility can occur without risk to the child or the
5 employee of the Department.

6 Otherwise, the order shall be executed and the child taken into
7 custody by a peace officer or employee of the court.

8 D. The court shall not enter a prepetition emergency custody
9 order removing a child from the home of the child unless the court
10 makes a determination:

11 1. That an imminent safety threat exists and continuation in
12 the home of the child is contrary to the welfare of the child; and

13 2. Whether reasonable efforts have been made to prevent the
14 removal of the child from the child's home; or

15 3. An absence of efforts to prevent the removal of the child
16 from the home of the child is reasonable because the removal is due
17 to an emergency and is for the purpose of providing for the safety
18 and welfare of the child.

19 E. Whenever a child is taken into custody pursuant to this
20 section:

21 1. The child may be taken to a kinship care home or an
22 emergency foster care home designated by the Department, or if no
23 such home is available, to a children's shelter located within the
24 county where protective or emergency custody is assumed or, if there

1 is no children's shelter within the county, to a children's shelter
2 designated by the court;

3 2. Unless otherwise provided by administrative order entered
4 pursuant to subsection F of this section, the child may be taken
5 before a judge of the district court or the court may be contacted
6 verbally for the purpose of obtaining an order for emergency
7 custody. The court may place the child in the emergency custody of
8 the Department or some other suitable person or entity pending
9 further hearing specified by Section 1-4-203 of this title;

10 3. The child may be taken directly to or retained in a health
11 care facility for medical treatment, when the child is in need of
12 emergency medical treatment to maintain the child's health, or as
13 otherwise directed by the court; or

14 4. The child may be taken directly to or retained in a
15 behavioral health treatment facility for evaluation or inpatient
16 treatment, in accordance with the provisions of the Inpatient Mental
17 Health and Substance Abuse Treatment of Minors Act, when the child
18 is in need of behavioral health care to preserve the child's health,
19 or as otherwise directed by the court; and

20 5. Unless otherwise provided by administrative order entered
21 pursuant to subsection F of this section, the district court of the
22 county where the custody is assumed shall be immediately notified,
23 verbally or in writing, that the child has been taken into custody.
24 If notification is verbal, written notification shall be sent to the

1 district court within one (1) judicial day of such verbal
2 notification.

3 F. The court may provide, in an administrative order issued
4 pursuant to this section, for the disposition of children taken into
5 custody and notification of the assumption of such custody.

6 1. Such order or rule shall be consistent with the provisions
7 of subsection E of this section and may include a process for
8 release of a child prior to an emergency custody hearing. The
9 administrative order shall not include a provision to modify
10 protective custody of a child to emergency custody of the Department
11 upon admission of a child to a shelter; and

12 2. The administrative order may require joint training of peace
13 officers and Department staff deemed necessary by the court to carry
14 out the provisions of the administrative order.

15 G. No child taken into custody pursuant to this section shall
16 be confined in any jail, adult lockup, or adult or juvenile
17 detention facility.

18 H. When a determination is made by the Department that there is
19 a significant risk of abuse or neglect, but there is not an imminent
20 safety threat to the child, the Department may recommend a court-
21 supervised and Department-monitored in-home placement. The
22 Department shall assist the family in obtaining the services
23 necessary to maintain the in-home care and correct the conditions
24 leading to the risk determination.

1 I. Any peace officer, employee of the court, or employee of the
2 Department is authorized to transport a child when acting pursuant
3 to this section. Such persons and any other person acting under the
4 direction of the court, who in good faith transports any child or
5 carries out duties pursuant to this section, shall be immune from
6 civil or criminal liability that may result by reason of such act.
7 For purposes of any proceedings, civil or criminal, the good faith
8 of any such person shall be presumed. This provision shall not
9 apply to damage or injury caused by the willful, wanton or gross
10 negligence or misconduct of a person.

11 J. A parent or person responsible for the child who is arrested
12 on a charge or warrant other than child abuse or neglect or an act
13 of child endangerment may designate another person to take physical
14 custody of the child. Upon this request, the peace officer may
15 release the child to the physical custody of the designated person.

16 K. A child shall not be removed from the custody of the child's
17 parent or legal guardian due to situational neglect unless the
18 Department determines the child is in need of immediate protection
19 due to an imminent safety threat. The Department may recommend a
20 court-supervised and Department-monitored, in-home placement for
21 instances of situational neglect. The Department shall assist the
22 parent or legal guardian in obtaining the services necessary to
23 maintain the in-home care and correct the conditions leading to the
24 situational neglect.

SECTION 3. This act shall become effective November 1, 2019.

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