

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 292

By: Griffin of the Senate

and

Echols of the House

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7
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9 COMMITTEE SUBSTITUTE

10 An Act relating to children; amending 10A O.S. 2011,
11 Section 1-1-105, as last amended by Section 3,
12 Chapter 353, O.S.L. 2012 (10A O.S. Supp. 2014,
13 Section 1-1-105), which relates to definitions;
14 modifying definition; deleting term; adding
15 definition of failure to protect; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-1-105, as
19 last amended by Section 3, Chapter 353, O.S.L. 2012 (10A O.S. Supp.
20 2014, Section 1-1-105), is amended to read as follows:

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

23 1. "Abandonment" means:

24 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 ~~or failure to protect~~
8 ~~from harm or threatened harm~~ to the health, safety, or welfare of a
9 child by a person responsible for the child's health, safety, or
10 welfare, including but not limited to nonaccidental physical or
11 mental injury, sexual abuse, or sexual exploitation. Provided,
12 however, that nothing contained in this act shall prohibit any
13 parent from using ordinary force as a means of discipline including,
14 but not limited 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, or encouraging a child to engage
3 in prostitution, as defined by law, by a person
4 responsible for the health, safety, or welfare of a
5 child, or allowing, permitting, encouraging, or
6 engaging in the lewd, obscene, or pornographic, as
7 defined by law, photographing, filming, or depicting
8 of a child in those acts by a person responsible for
9 the health, safety, and welfare of the child;

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

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

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

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

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

1 8. "Child advocacy center" means a center and the
2 multidisciplinary child abuse team of which it is a member that is
3 accredited by the National Children's Alliance or that is completing
4 a sixth year of reaccreditation. Child advocacy centers shall be
5 classified, based on the child population of a district attorney's
6 district, as follows:

- 7 a. nonurban centers in districts with child populations
8 that are less than sixty thousand (60,000), and
- 9 b. midlevel nonurban centers in districts with child
10 populations equal to or greater than sixty thousand
11 (60,000), but not including Oklahoma and Tulsa
12 counties;

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

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

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

21 ~~12.~~ "Community-based services" or "community-based programs"
22 means services or programs which maintain community participation or
23 supervision in their planning, operation, and evaluation.

24 Community-based services and programs may include, but are not

1 limited to, emergency shelter, crisis intervention, group work, case
2 supervision, job placement, recruitment and training of volunteers,
3 consultation, medical, educational, home-based services, vocational,
4 social, preventive and psychological guidance, training, counseling,
5 early intervention and diversionary substance abuse treatment,
6 sexual abuse treatment, transitional living, independent living, and
7 other related services and programs;

8 ~~13.~~ 12. "Concurrent permanency planning" means, when indicated,
9 the implementation of two plans for a child entering foster care.
10 One plan focuses on reuniting the parent and child; the other seeks
11 to find a permanent out-of-home placement for the child with both
12 plans being pursued simultaneously;

13 ~~14.~~ 13. "Court-appointed special advocate" or "CASA" means a
14 responsible adult volunteer who has been trained and is supervised
15 by a court-appointed special advocate program recognized by the
16 court, and when appointed by the court, serves as an officer of the
17 court in the capacity as a guardian ad litem;

18 ~~15.~~ 14. "Court-appointed special advocate program" means an
19 organized program, administered by either an independent, not-for-
20 profit corporation, a dependent project of an independent, not-for-
21 profit corporation or a unit of local government, which recruits,
22 screens, trains, assigns, supervises and supports volunteers to be
23 available for appointment by the court as guardians ad litem;

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1 ~~16.~~ 15. "Custodian" means an individual other than a parent,
2 legal guardian or Indian custodian, to whom legal custody of the
3 child has been awarded by the court. As used in this title, the
4 term "custodian" shall not mean the Department of Human Services;

5 ~~17.~~ 16. "Day treatment" means a nonresidential program which
6 provides intensive services to a child who resides in the child's
7 own home, the home of a relative, group home, a foster home or
8 residential child care facility. Day treatment programs include,
9 but are not limited to, educational services;

10 ~~18.~~ 17. "Department" means the Department of Human Services;

11 ~~19.~~ 18. "Dependency" means a child who is homeless or without
12 proper care or guardianship through no fault of his or her parent,
13 legal guardian, or custodian;

14 ~~20.~~ 19. "Deprived child" means a child:

- 15 a. who is for any reason destitute, homeless, or
- 16 abandoned,
- 17 b. who does not have the proper parental care or
- 18 guardianship,
- 19 c. who has been abused, neglected, or is dependent,
- 20 d. whose home is an unfit place for the child by reason
- 21 of depravity on the part of the parent or legal
- 22 guardian of the child, or other person responsible for
- 23 the health or welfare of the child,
- 24

- 1 e. who is a child in need of special care and treatment
2 because of the child's physical or mental condition,
3 and the child's parents, legal guardian, or other
4 custodian is unable or willfully fails to provide such
5 special care and treatment. As used in this
6 paragraph, a child in need of special care and
7 treatment includes, but is not limited to, a child who
8 at birth tests positive for alcohol or a controlled
9 dangerous substance and who, pursuant to a drug or
10 alcohol screen of the child and an assessment of the
11 parent, is determined to be at risk of harm or
12 threatened harm to the health or safety of a child,
- 13 f. who is a child with a disability deprived of the
14 nutrition necessary to sustain life or of the medical
15 treatment necessary to remedy or relieve a life-
16 threatening medical condition in order to cause or
17 allow the death of the child if such nutrition or
18 medical treatment is generally provided to similarly
19 situated children without a disability or children
20 with disabilities; provided that no medical treatment
21 shall be necessary if, in the reasonable medical
22 judgment of the attending physician, such treatment
23 would be futile in saving the life of the child,
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- 1 g. who, due to improper parental care and guardianship,
2 is absent from school as specified in Section 10-106
3 of Title 70 of the Oklahoma Statutes, if the child is
4 subject to compulsory school attendance,
5 h. whose parent, legal guardian or custodian for good
6 cause desires to be relieved of custody,
7 i. who has been born to a parent whose parental rights to
8 another child have been involuntarily terminated by
9 the court and the conditions which led to the making
10 of the finding, which resulted in the termination of
11 the parental rights of the parent to the other child,
12 have not been corrected, or
13 j. whose parent, legal guardian, or custodian has
14 subjected another child to abuse or neglect or has
15 allowed another child to be subjected to abuse or
16 neglect and is currently a respondent in a deprived
17 proceeding.

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

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

5 ~~21.~~ 20. "Dispositional hearing" means a hearing by the court as
6 provided by Section 1-4-706 of this title;

7 ~~22.~~ 21. "Drug-endangered child" means a child who is at risk of
8 suffering physical, psychological or sexual harm as a result of the
9 use, possession, distribution, manufacture or cultivation of
10 controlled substances, or the attempt of any of these acts, by a
11 person responsible for the health, safety or welfare of the child,
12 as defined in paragraph 51 of this section. This term includes
13 circumstances wherein the substance abuse of the person responsible
14 for the health, safety or welfare of the child interferes with that
15 person's ability to parent and provide a safe and nurturing
16 environment for the child. The term also includes newborns who test
17 positive for a controlled dangerous substance, with the exception of
18 those substances administered under the care of a physician;

19 ~~23.~~ 22. "Emergency custody" means the custody of a child prior
20 to adjudication of the child following issuance of an order of the
21 district court pursuant to Section 1-4-201 of this title or
22 following issuance of an order of the district court pursuant to an
23 emergency custody hearing, as specified by Section 1-4-203 of this
24 title;

1 ~~24.~~ 23. "Facility" means a place, an institution, a building or
2 part thereof, a set of buildings, or an area whether or not
3 enclosing a building or set of buildings used for the lawful custody
4 and treatment of children;

5 24. "Failure to protect" means failure to take reasonable
6 action to remedy or prevent child abuse or neglect, and includes the
7 conduct of a non-abusing parent or guardian who knows the identity
8 of the abuser or the person neglecting the child, but lies, conceals
9 or fails to report the child abuse or neglect or otherwise take
10 reasonable action to end the abuse or neglect;

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

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

21 27. "Foster parent eligibility assessment" includes a criminal
22 background investigation including, but not limited to, a national
23 criminal history records search based upon the submission of
24 fingerprints, home assessments, and any other assessment required by

1 the Department of Human Services, the Office of Juvenile Affairs, or
2 any child-placing agency pursuant to the provisions of the Oklahoma
3 Child Care Facilities Licensing Act;

4 28. "Guardian ad litem" means a person appointed by the court
5 pursuant to the provisions of Section 1-4-306 of this title having
6 those duties and responsibilities as set forth in that section. The
7 term "guardian ad litem" shall refer to a court-appointed special
8 advocate as well as to any other person appointed pursuant to the
9 provisions of Section 1-4-306 of this title to serve as a guardian
10 ad litem;

11 29. "Guardian ad litem of the estate of the child" means a
12 person appointed by the court to protect the property interests of a
13 child pursuant to Section ~~1-8-109~~ 1-8-108 of this title;

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

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

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

- 3 a. a substantial risk of death,
- 4 b. extreme physical pain,
- 5 c. protracted disfigurement,
- 6 d. a loss or impairment of the function of a body member,
7 organ, or mental faculty,
- 8 e. an injury to an internal or external organ or the
9 body,
- 10 f. a bone fracture,
- 11 g. sexual abuse or sexual exploitation,
- 12 h. chronic abuse including, but not limited to, physical,
13 emotional, or sexual abuse, or sexual exploitation
14 which is repeated or continuing,
- 15 i. torture that includes, but is not limited to,
16 inflicting, participating in or assisting in
17 inflicting intense physical or emotional pain upon a
18 child repeatedly over a period of time for the purpose
19 of coercing or terrorizing a child or for the purpose
20 of satisfying the craven, cruel, or prurient desires
21 of the perpetrator or another person, or
22 j. any other similar aggravated circumstance;

23 33. "Heinous and shocking neglect" includes, but is not limited
24 to:

- 1 a. chronic neglect that includes, but is not limited to,
2 a persistent pattern of family functioning in which
3 the caregiver has not met or sustained the basic needs
4 of a child which results in harm to the child,
5 b. neglect that has resulted in a diagnosis of the child
6 as a failure to thrive,
7 c. an act or failure to act by a parent that results in
8 the death or near death of a child or sibling, serious
9 physical or emotional harm, sexual abuse, sexual
10 exploitation, or presents an imminent risk of serious
11 harm to a child, or
12 d. any other similar aggravating circumstance;

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

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

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

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

7 38. 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:
24

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

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

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

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

5 41. "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 42. "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 43. "Minor" means the same as the term "child" as defined in
15 this section;

16 44. "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 45. "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 46. "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 47. "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 48. "Permanency hearing" means a hearing by the court pursuant
13 to Section 1-4-811 of this title;

14 49. "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 50. "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 51. "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 52. "Protective custody" means custody of a child taken by a
8 law enforcement officer or designated employee of the court without
9 a court order;

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

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

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

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

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

22 58. "Safety threat" means the threat of serious harm due to
23 child abuse or neglect occurring in the present or in the very near
24 future and without the intervention of another person, a child would

1 likely or in all probability sustain severe or permanent disability
2 or injury, illness, or death;

3 59. "Safety analysis" means action taken by the Department in
4 response to a report of alleged child abuse or neglect that may
5 include an assessment or investigation based upon an analysis of the
6 information received according to priority guidelines and other
7 criteria adopted by the Department;

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

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

18 62. "Sibling" means a biologically or legally related brother
19 or sister of a child;

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

- 22 a. has been certified by the Developmental Disabilities
23 Services Division of the Department of Human Services,
- 24 b. is monitored by the Division, and

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

3 64. "Temporary custody" means court-ordered custody of an
4 adjudicated deprived child;

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

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

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

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

55-1-7155 EK 03/17/15