

1 ENGROSSED HOUSE
2 BILL NO. 1273

By: Nollan of the House

3 and

4 Griffin of the Senate

5
6
7 An Act relating to children and juvenile code;
8 amending 10A O.S. 2011, Section 1-1-105, as last
9 amended by Section 3, Chapter 353, O.S.L. 2012 (10A
10 O.S. Supp. 2014, Section 1-1-105), which relates to
11 definitions; modifying scope of certain definition;
12 and providing an effective date.

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

14 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-1-105, as
15 last amended by Section 3, Chapter 353, O.S.L. 2012 (10A O.S. Supp.
16 2014, Section 1-1-105), is amended to read as follows:

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

19 1. "Abandonment" means:

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

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

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

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

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

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

20 c. "Sexual exploitation" includes but is not limited to
21 allowing, permitting, ~~or~~ encouraging, or forcing a
22 child to engage in prostitution, as defined by law, by
23 any person eighteen (18) years of age or older or by a
24 person responsible for the health, safety, or welfare

1 of a child, or allowing, permitting, encouraging, or
2 engaging in the lewd, obscene, or pornographic, as
3 defined by law, photographing, filming, or depicting
4 of a child in those acts by a person responsible for
5 the health, safety, and welfare of the child;

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

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

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

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

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

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

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

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

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

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

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

17 12. "Community-based services" or "community-based programs"
18 means services or programs which maintain community participation or
19 supervision in their planning, operation, and evaluation.

20 Community-based services and programs may include, but are not
21 limited to, emergency shelter, crisis intervention, group work, case
22 supervision, job placement, recruitment and training of volunteers,
23 consultation, medical, educational, home-based services, vocational,
24 social, preventive and psychological guidance, training, counseling,

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

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

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

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

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

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

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

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

10 20. "Deprived child" means a child:

- 11 a. who is for any reason destitute, homeless, or
12 abandoned,
- 13 b. who does not have the proper parental care or
14 guardianship,
- 15 c. who has been abused, neglected, or is dependent,
- 16 d. whose home is an unfit place for the child by reason
17 of depravity on the part of the parent or legal
18 guardian of the child, or other person responsible for
19 the health or welfare of the child,
- 20 e. who is a child in need of special care and treatment
21 because of the child's physical or mental condition,
22 and the child's parents, legal guardian, or other
23 custodian is unable or willfully fails to provide such
24 special care and treatment. As used in this

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

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

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

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

- 1 i. who has been born to a parent whose parental rights to
2 another child have been involuntarily terminated by
3 the court and the conditions which led to the making
4 of the finding, which resulted in the termination of
5 the parental rights of the parent to the other child,
6 have not been corrected, or
- 7 j. whose parent, legal guardian, or custodian has
8 subjected another child to abuse or neglect or has
9 allowed another child to be subjected to abuse or
10 neglect and is currently a respondent in a deprived
11 proceeding.

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

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

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

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

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

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

23 25. "Foster care" or "foster care services" means continuous
24 twenty-four-hour care and supportive services provided for a child

1 in foster placement including, but not limited to, the care,
2 supervision, guidance, and rearing of a foster child by the foster
3 parent;

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

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

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

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

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

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

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

- 16 a. a substantial risk of death,
- 17 b. extreme physical pain,
- 18 c. protracted disfigurement,
- 19 d. a loss or impairment of the function of a body member,
20 organ, or mental faculty,
- 21 e. an injury to an internal or external organ or the
22 body,
- 23 f. a bone fracture,
- 24 g. sexual abuse or sexual exploitation,

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

12 33. "Heinous and shocking neglect" includes, but is not limited
13 to:

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

1 d. any other similar aggravating circumstance;

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

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

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

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

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

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

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

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

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

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

15 (b) child abuse and neglect prevention and
16 intervention-related services for the child,
17 parents or persons responsible for the care
18 of the child if court intervention is not
19 determined to be necessary,

20 (2) "Unsubstantiated - Services recommended" means
21 the Department has determined, after an
22 investigation of a report of child abuse or
23 neglect, that insufficient evidence exists to
24 fully determine whether child abuse or neglect

1 has occurred. If child abuse or neglect is
2 unsubstantiated, the Department may recommend,
3 when determined to be necessary, that the parents
4 or persons responsible for the care of the child
5 obtain child abuse and neglect prevention- and
6 intervention-related services, or

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

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

14 40. "Kinship guardianship" means a permanent guardianship as
15 defined in this section;

16 41. "Kinship relation" or "kinship relationship" means
17 relatives, stepparents, or other responsible adults who have a bond
18 or tie with a child and/or to whom has been ascribed a family
19 relationship role with the child's parents or the child; provided,
20 however, in cases where the Indian Child Welfare Act applies, the
21 definitions contained in 25 U.S.C., Section 1903 shall control;

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

1 43. "Minor" means the same as the term "child" as defined in
2 this section;

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

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

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

18 47. "Neglect" means:

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

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

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

- 1 (3) supervision or appropriate caretakers, or
2 (4) special care made necessary by the physical or
3 mental condition of the child,

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

- 6 (1) the use, possession, sale, or manufacture of
7 illegal drugs,
8 (2) illegal activities, or
9 (3) sexual acts or materials that are not age-
10 appropriate, or

11 c. abandonment.

12 Nothing in this paragraph shall be construed to mean a child is
13 abused or neglected for the sole reason the parent, legal guardian
14 or person having custody or control of a child, in good faith,
15 selects and depends upon spiritual means alone through prayer, in
16 accordance with the tenets and practice of a recognized church or
17 religious denomination, for the treatment or cure of disease or
18 remedial care of such child. Nothing contained in this paragraph
19 shall prevent a court from immediately assuming custody of a child,
20 pursuant to the Oklahoma Children's Code, and ordering whatever
21 action may be necessary, including medical treatment, to protect the
22 child's health or welfare;

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

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

5 50. "Permanent guardianship" means a judicially created
6 relationship between a child, a kinship relation of the child, or
7 other adult established pursuant to the provisions of Section 1-4-
8 709 of this title;

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

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

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

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

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

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

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

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

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

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

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

8 62. "Sibling" means a biologically or legally related brother
9 or sister of a child;

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

- 12 a. has been certified by the Developmental Disabilities
13 Services Division of the Department of Human Services,
- 14 b. is monitored by the Division, and
- 15 c. is funded through the Home- and Community-Based Waiver
16 Services Program administered by the Division;

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

19 65. "Therapeutic foster family home" means a foster family home
20 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;

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