An Act

ENROLLED SENATE
BILL NO. 2088

By: Newberry of the Senate

and

Nollan of the House

An Act relating to rights of group homes; amending 10A O.S. 2011, Sections 1-1-102, 1-4-802, 1-4-805, 1-4-807 and 1-4-810, which relate to recognition of interests and child placement proceedings; modifying certain statement of interest; modifying persons allowed to provide testimony in certain proceedings; authorizing cross examination of certain persons; authorizing certain persons to submit certain information; requiring notice of certain proceedings to certain persons; authorizing certain persons to assist in preparation of certain reports; and providing an effective date.

SUBJECT: Foster child placement procedures

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-1-102, is amended to read as follows:

Section 1-1-102. A. For the purposes of the Oklahoma Children's Code, the Legislature recognizes that:

1. Parents have a natural, legal, and moral right, as well as a duty, to care for and support their children and such rights are protected by state and federal laws as well as the Constitution. To that end, it is presumed that the best interests of a child are ordinarily served by leaving the child in the custody of the parents, who are expected to have the strongest bond of love and

affection and to be best able to provide a child those needed qualities that make a child's life safe and secure. Nevertheless, this presumption may be rebutted where there is evidence of abuse and neglect or threat of harm;

2. A child has a right to be raised by the mother and father of the child as well as a right to be raised free from physical and emotional abuse or neglect. When it is necessary to remove a child from a parent, the child is entitled to a permanent home and to be placed in the least restrictive environment to meet the needs of the child; and

3. Because the state has an interest in its present and future citizens as well as a duty to protect those who, because of age, are unable to protect themselves, it is the policy of this state to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health, safety, and welfare of such children. To this end, where family circumstances threaten the safety of a child, the state's interest in the welfare of the child takes precedence over the natural right and authority of the parent to the extent that it is necessary to protect the child and assure that the best interests of the child are met.

B. It is the intent of the Legislature that the Oklahoma Children's Code provide the foundation and process for state intervention into the parent-child relationship whenever the circumstances of a family threaten the safety of a child and to properly balance the interests of the parties stated herein. To this end, it is the purpose of the laws relating to children alleged or found to be deprived to:

1. Intervene in the family only when necessary to protect a child from harm or threatened harm;

2. Provide expeditious and timely judicial and agency procedures for the protection of the child;

3. Preserve, unify, and strengthen the family ties of the child whenever possible when in the best interests of the child to do so;

4. Recognize that the right to family integrity, preservation or reunification is limited by the right of the child to be protected from abuse and neglect;

5. Make reasonable efforts to prevent or eliminate the need for the removal of a child from the home and make reasonable efforts to return the child to the home unless otherwise prescribed by the Oklahoma Children's Code;

6. Recognize that permanency is in the best interests of the child;

7. Ensure that when family rehabilitation and reunification are not possible, the child will be placed in an adoptive home or other permanent living arrangement in a timely fashion; and

8. Secure for each child the permanency, care, education, and guidance as will best serve the spiritual, emotional, mental and physical health, safety, and welfare of the child.

C. Whenever it is necessary for a child to be placed outside the home pursuant to the Oklahoma Children's Code, it is the intent of the Legislature that:

1. Each child shall be assured the care, guidance, and supervision in a permanent home or foster home that will serve the best interests of the child including, but not limited to, the development of the moral, emotional, spiritual, mental, social, educational, and physical well-being of the child;

2. When a child is placed in foster care, the foster parent shall be allowed to consider the child as part of the family;

3. Whenever possible siblings shall be placed together and when it is not possible efforts shall be made to preserve the relationships through visitation and other methods of communication; and

4. Permanent placement is achieved as soon as possible.

D. A foster parent or group home where a child is placed has a recognizable interest in the familial relationship that the foster

parent or group home establishes with a foster child and shall therefore be considered an essential participant with regard to decisions related to the care, supervision, guidance, rearing, and other foster care services to the child.

E. It is the intent of the Legislature that the paramount consideration in all proceedings within the Oklahoma Children's Code is the best interests of the child.

SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-802, is amended to read as follows:

Section 1-4-802. A. At any hearing pursuant to the provisions of the Oklahoma Children's Code for the purpose of determining the placement of a child or that a child in state custody is to be released from state custody, the court shall provide an opportunity to a representative of the Department of Human Services, the present foster parent or representative of the group home where a child is placed, the guardian ad litem and the child, if of sufficient age as determined by the court, to present sworn testimony regarding the placement of the child or release of the child from state custody. In all cases in which the Office of Juvenile System Oversight has conducted an investigation regarding placement of a child or release of a child from state custody and believes there is a serious risk of danger to the health or safety of that child, the Oklahoma Commission on Children and Youth shall provide to the court and the parties a written report of their investigation and recommendation for placement of the child. Such report shall be provided to the court and the parties no less than five (5) days prior to the hearing. The court, upon motion of any party, shall order attendance of any person preparing such report when it appears there is a substantial likelihood that material evidence not contained in the report may be produced by the testimony of any person having prepared the report. The court shall consider the report when making his or her decision regarding placement of a child or release of a child from state custody.

B. The court, the district attorney or the attorneys for the parties may cross examine the representative of the Department, the child, if of sufficient age as determined by the court, the present foster parents or group home representative, and the guardian ad litem.

C. The court shall issue written findings of fact and conclusions of law. All hearings concerning such cases shall be on the record. The failure of any court to provide an opportunity to a representative of the Department or to the present foster parent or group home representative, the guardian ad litem and to the child, if of sufficient age as determined by the court, to present the sworn testimony pursuant to this section shall be subject to immediate mandamus to an appropriate court.

SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-805, is amended to read as follows:

Section 1-4-805. A. If a child placed in the custody of a child-placing agency or in the custody of the Department of Human Services by the court has resided with a foster parent or group home for three (3) or more months:

1. Except in an emergency, the Department or child-placing agency shall:

a. give a minimum of five (5) judicial days' advance notice to the foster parent or group home and to the court before removing a child from such foster placement, and

b. at the time of such notification, provide the foster parent or group home with a written statement of the reasons for removing a child;

2. An oral or written opinion may be provided to the court by a party ~~or~~, foster parent or representative of a group home where a child is placed in support of or in opposition to any change in the child's placement that is planned or under consideration by the Department or child-placing agency;

3. The court shall resolve any concerns raised by a party ~~or~~, foster parent or group home representative regarding a planned change in the child's placement during any hearing in which the concerns are brought to the attention of the court or the court may schedule an informal placement review hearing that shall be heard within fifteen (15) judicial days from the date the concerns are

brought to the attention of the court. The court may, in its discretion, stay a proposed change in placement until the informal placement review hearing is held; and

4. The foster parent or group home representative shall, at any hearing, be entitled to submit to the court written reports or present testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to such other information the court may request.

B. When a child is placed in the custody of the Department or any child-placing agency, the Department or child-placing agency shall have discretion to determine an appropriate foster placement for the child. Except as provided in this section, the Department or child-placing agency may remove a child in its custody from a foster placement whenever the Department or child-placing agency determines that removal is in the best interests of the deprived child.

C. 1. In order to promote stability for foster children and limit repeated movement of such children from one foster placement to another, the Department or child-placing agency, except as otherwise provided by this subsection, shall not change the foster home or group home placement of a child without the approval of the court in the following circumstances:

a. the court or other party receiving notice from the Department of the movement of the child has filed a written request for an informal hearing, as provided in Section 1-4-804 of this title,

b. the court has stayed a planned change in a child's placement pending a judicial review due to a verbal or written objection made by a party or by a foster parent or group home representative during a court proceeding, or

c. a foster parent or representative of a group home with whom the child has resided for more than six (6) months objects, in writing pursuant to the provisions of this subsection, after notice of the removal of the child by the Department or the child-placing agency.

2. The objection shall be filed with the court by the foster parent or group home and served on the Department or child-placing agency within five (5) judicial days after receipt of the notice from the Department or child-placing agency regarding removal of the child. The court shall provide for notice to other parties in the case.

3. Timely filing and service of the objection shall stay removal of the child pending review of the court unless the Department's or child-placing agency's stated reason for removal is due to an emergency. As used in this paragraph, "emergency" means a removal that is:

a. pursuant to an order of the court entered during or following a hearing including, but not limited to, an order authorizing placement of a child with a parent or sibling,

b. at the request of the foster parent or group home,

c. for emergency medical or behavioral health treatment,

d. due to substantial noncompliance by the foster parent or group home with applicable contract requirements and agreements such that the health, safety, or welfare of the child is in imminent danger, or

e. due to a pending investigation of allegations of abuse or neglect of a child by a foster parent or other person residing in the foster family home or group home.

4. The court shall conduct an informal placement review hearing within fifteen (15) judicial days on any objection filed by a party, ~~or~~ foster parent or group home pursuant to this section. The court may order that the child remain in or be returned to the home of the objecting foster parent or group home if the court finds that the placement decision of the Department or child-placing agency was arbitrary, inconsistent with the child's permanency plan or not in the best interests of the child.

SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-4-807, is amended to read as follows:

Section 1-4-807. A. 1. Every case regarding a child alleged or adjudicated to be deprived shall be reviewed by the court at a hearing no later than six (6) months from the date of the child's removal from the home and at least once every six (6) months thereafter until permanency is achieved or the court otherwise terminates jurisdiction except as otherwise set forth in paragraph 2 of this subsection. A review hearing may be held concurrently with a permanency hearing.

2. When the Department of Human Services has documented a compelling reason why a petition to terminate parental rights to a child is not in the best interests of the child that is based upon a consideration that the child is presently not capable of functioning in a family setting, the court shall reevaluate the status of the child every ninety (90) days until there is a final determination that the child cannot be placed in a family setting.

3. At any time during the pendency of the case, any party may request the court to review the case. If granted, the requesting party shall serve notice on all parties of the date and time of the hearing.

B. If a foster parent, group home, preadoptive parent, or relative is currently providing care for a child, the Department shall give the foster parent, group home, preadoptive parent, or relative notice of a proceeding concerning the child. A foster parent, group home representative, preadoptive parent, or relative providing care for a child has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, group home, preadoptive parent, or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

C. The court shall receive all evidence helpful in deciding the issues before the court including, but not limited to, oral and written reports, which may be admitted and relied upon to the extent of their probative value, even though not competent for purposes of an adjudicatory hearing. All service provider progress reports and

critical incident reports shall be submitted to the court and shall also be delivered to the District Attorney, the attorney or attorneys representing the parents or group home, the child's attorney and guardian ad litem, if applicable, and the relevant tribe or tribes, if applicable.

D. At each review hearing the court shall:

1. Determine and include the following in its orders:

a. whether the individualized service plan, services, and placement meet the special needs and best interests of the child with the child's health, safety, and educational needs specifically addressed,

b. whether there is a need for the continued placement of the child,

c. whether the current permanency plan for the child remains the appropriate plan to meet the health, safety, and best interests of the child,

d. whether the services set forth in the individualized service plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances or as the court determines to be in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child,

e. whether the terms of visitation need to be modified, including the visitation with siblings if separated,

f. the time frame that should be followed to achieve reunification or other permanent plan for the child,

g. whether reasonable efforts have been made to provide for the safe return of the child to the child's own home. If the court determines or has previously determined that reasonable efforts are not required pursuant to the provisions of Section 1-4-809 of this

title, or that continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan for the child, the court shall determine if reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and determine the steps necessary to finalize permanency for the child,

h. where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the child in making the transition from foster care to independent living. The court shall inquire or cause inquiry to be made of the child regarding any proposed independent living plan,

i. whether the nature and extent of services being provided the child and parent or parents of the child are adequate and shall order that additional services be provided or studies, assessments, or evaluations be conducted, if necessary, to ensure the safety of the child and to protect the child from further physical, mental, or emotional harm, or to correct the conditions that led to the adjudication,

j. whether, in accordance with the safety or well-being of any child, reasonable efforts have been made to:

(1) place siblings, who have been removed, together in the same foster care, guardianship, or adoptive placement, and

(2) provide for frequent visitation or other ongoing interaction in the case of siblings who have been removed and who are not placed together, and

k. whether, during the ninety-day period immediately prior to the date on which the child in the custody of the Department will attain eighteen (18) years of age, the Department and, as appropriate, other representatives of the child are providing the child with assistance and support in developing an

appropriate transition plan that is personalized at the direction of the child, that includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect;

2. Consider in-state and out-of-state placement options for the child; and

3. Determine the safety of the child and consider fully all relevant prior and current information including, but not limited to, the report or reports submitted pursuant to Sections 1-4-805 and 1-4-808 of this title.

E. In making its findings, the court shall consider the following:

1. Whether compliance with the individualized service plan has occurred, including whether the Department has provided care that is consistent with the health, safety, and educational needs of the child while in an out-of-home placement;

2. The extent of progress that has been made toward alleviating or correcting the conditions that caused the child to be adjudicated deprived;

3. Whether the child should be returned to a parent or parents and whether or not the health, safety, and welfare of the child can be protected by a parent or parents if returned home; and

4. An appropriate permanency plan for the child, including concurrent planning when applicable, pursuant to Section 1-4-706 of this title.

SECTION 5. AMENDATORY 10A O.S. 2011, Section 1-4-810, is amended to read as follows:

Section 1-4-810. A. 1. When a child has been in out-of-home care for twelve (12) months or longer, the court may require that the Department of Human Services facilitate a meeting held no later than thirty (30) days prior to the permanency hearing to discuss

recommendations regarding the child's permanency plan that will be reported to and reviewed by the court.

2. The court may direct that the assigned guardian ad litem, which may be a court-appointed special advocate, if any, a judicial case manager, or the Department make arrangements for the meeting. The foster parents of the child or a representative of a group home where the child is placed, the parents of the child, or the parents' attorney, a postadjudication review board member, the guardian ad litem who has been appointed to the case, the child, and others as appropriate, and the child's attorney shall be contacted to assist in the preparation of the report; provided, however, persons determined not to require reasonable efforts pursuant to the provisions of Section 1-4-809 of this title shall not be required to attend.

B. 1. Prior to a permanency hearing, the Department shall prepare a report regarding the child for court review and shall provide a copy of the report to the court and the parties not less than three (3) judicial days prior to the permanency hearing.

2. The report shall include the proposed permanency plan by the Department, the efforts by the Department to effectuate the permanency plan for the child, address the options for the permanent placement of the child, and examine the reasons for excluding higher priority options.

3. Unless a permanency hearing has been conducted, the Department, as applicable, shall contact the foster parents or group home of the child, the parents of the child, or the parents' attorney, a postadjudication review board member, the guardian ad litem, or the court appointed special advocate who has been appointed to the case, and the child's attorney to assist in the preparation of the report.

C. The up-to-date and accurate report shall also contain, but not be limited to, the following information, if relevant:

1. Efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan;

2. Status of the child, including the child's behavioral, physical, and emotional health;

3. A recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefor, and the anticipated date for meeting the goal; and

4. A recommendation regarding whether the placement of the child should be extended and the reasons for the recommendation.

D. The child's attorney, the parents or parents' attorney, the foster parent or group home representative, the postadjudicatory review board member, the guardian ad litem, or the court appointed special advocate of the child may submit additional informational reports to the court for review.

SECTION 6. This act shall become effective November 1, 2014.

Passed the Senate the 11th day of March, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2014.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 15th
day of April, 20 14, at 3:46 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 21st
day of April, 20 14, at 2:57 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 21st
day of April, 20 14, at 5:40 o'clock P. M.
By: Chris Benge