

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1273

By: Nollan

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5  
6 AS INTRODUCED

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

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

17 47. "Neglect" means:

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

- 20 (1) adequate nurturance and affection, food,  
21 clothing, shelter, sanitation, hygiene, or  
22 appropriate education,  
23 (2) medical, dental, or behavioral health care,  
24 (3) supervision or appropriate caretakers, or



1 (4) special care made necessary by the physical or  
2 mental condition of the child,

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

5 (1) the use, possession, sale, or manufacture of  
6 illegal drugs,

7 (2) illegal activities, or

8 (3) sexual acts or materials that are not age-  
9 appropriate, or

10 c. abandonment.

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

22 48. "Permanency hearing" means a hearing by the court pursuant  
23 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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1       66. "Transitional living program" means a residential program  
2 that may be attached to an existing facility or operated solely for  
3 the purpose of assisting children to develop the skills and  
4 abilities necessary for successful adult living. The program may  
5 include, but shall not be limited to, reduced staff supervision,  
6 vocational training, educational services, employment and employment  
7 training, and other appropriate independent living skills training  
8 as a part of the transitional living program; and

9       67. "Voluntary foster care placement" means the temporary  
10 placement of a child by the parent, legal guardian or custodian of  
11 the child in foster care pursuant to a signed placement agreement  
12 between the Department or a child-placing agency and the child's  
13 parent, legal guardian or custodian.

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

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16       55-1-6070           GRS           01/14/15

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