

ENROLLED SENATE
BILL NO. 285

By: Wright of the Senate

and

Gates of the House

An Act relating to children; amending 10 O.S. 1991, Sections 60.5A, 60.6, 60.17 and 1130, which relate to medical history forms, parental consent for adoption, confidentiality of certain hearings, and termination of parental rights; providing for release of certain medical information to certain persons; requiring certain confidentiality; providing for adoption without parental consent under certain circumstances; conforming language; clarifying situation in which parental rights may be terminated; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 60.5A, is amended to read as follows:

Section 60.5A. A. ~~When ordered by the court, any~~ Any person required to consent to the adoption of a child pursuant to the provisions of Section 60.5 of ~~Title 10 of the Oklahoma Statutes~~ this title shall complete a medical history form ~~which shall remain confidential pursuant to the provisions of Section 60.17 of Title 10 of the Oklahoma Statutes~~ containing, as far as is ascertainable, the medical history of the child to be adopted, the medical history of the natural parents of the child, and the medical history of the natural grandparents of the child.

Specifically, the form shall only contain information concerning:

1. The child, which shall include:
 - a. any medical or psychological evaluations, and
 - b. diseases, illnesses, accidents, allergies, and congenital defects; and
2. Parents of the child, which shall include:
 - a. allergies, diseases, and illnesses, including but not limited to diabetes, high blood pressure, alcoholism, heart disease, venereal disease, and epilepsy, and
 - b. drugs taken and consumption of alcohol during the pregnancy of the mother; and
3. Grandparents of the child, which shall include allergies, diseases, and illnesses including but not limited to high blood pressure, diabetes, heart disease, and epilepsy.

B. A copy of the medical history form shall be attached to the consent for adoption, or may be filed after the filing of the petition with the consent of the court.

C. ~~The provisions of this section shall not apply to children who are placed for adoption prior to July 1, 1984~~ Such medical history form shall be released by the court upon request of and to

the Department of Human Services, any certified adoption agency or licensed child-placing agency having custody of a child who is legally available for adoption, prospective adoptive parents, adoptive parents, or the child if over eighteen (18) years of age.

D. Any medical information authorized to be released pursuant to this section and Section 60.17 of this title shall be released in such a way that no person except the child can be identified.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 60.6, is amended to read as follows:

Section 60.6 A child under eighteen (18) years of age cannot be adopted without the consent of its parents, if living, except that consent is not required from:

1. A parent whose parental rights have been terminated pursuant to the provisions of Sections 1130, 1131 or 29.1 of this title; or

2. A parent who, for a period of twelve (12) months immediately preceding the filing of a petition for adoption of a child, has willfully failed, refused, or neglected to contribute to the support of such child:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto; or and where any of the above conditions exist it shall not be necessary to terminate parental rights under Section 1130 of this title prior to the adoption of said child. Provided that any decree of adoption heretofore entered by any court of appropriate jurisdiction within the State of Oklahoma wherein termination of parental rights, as prescribed in Section 1130 of this title, was not obtained shall not be invalid on the ground that such termination of parental rights was not obtained.

The incarceration of a parent shall not prevent termination of parental rights under this section; or

3. The father or putative father of a child born out of wedlock if:

a. prior to the hearing provided for in Section 29.1 of this title, and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy, or

b. at the hearing provided for in Section 29.1 of this title:

(1) he fails to prove that he is the father of the child, or

- (2) having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall not include those instances where the father or putative father fails to prove to the satisfaction of the court that he made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice, or
- c. he waives in writing his right to notice of the hearing provided for in Section 29.1 of this title, or
- d. he fails to appear at the hearing provided for in Section 29.1 of this title if all notice requirements continued in or pursuant to Section 1131 of this title have been met.

A determination that the consent of the father or putative father of a child born out of wedlock to the adoption of the child is not required shall not, by itself, act to relieve such father or putative father of his obligation to provide for the support of the child as otherwise required by law; or

4. A parent who is entitled to custody of a child and has abandoned the child; or

5. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. such condition is caused by or contributed to by acts or omissions of his parent, and
- b. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; or

6. A parent who has been convicted in a criminal action pursuant to the provisions of Sections 843, 845, 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or who has either:

- a. physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or

- b. physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse;
or

7. A parent who has been convicted in a criminal action of having caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

8. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. the parent has been sentenced to a period of incarceration of not less than ten (10) years, and
- b. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past; or

9. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. the parent has a mental illness or mental deficiency, as defined by paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- b. the continuation of parental rights would result in harm or threatened harm to the child, and
- c. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 60.17, is amended to read as follows:

Section 60.17 A. Unless otherwise ordered by the court, all hearings held in proceedings pursuant to the Uniform Adoption Act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

B. All papers and records including the original medical history forms pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection except as otherwise provided by this section. No person shall have access to such records except upon order of the judge of the court in which the decree of adoption was entered, for good cause shown.

C. ~~All~~ Except as otherwise authorized by this section, all files and records pertaining to said adoption proceedings shall be confidential and withheld from inspection except upon order of the court for good cause shown.

D. 1. The Department of Human Services, any certified adoption agency or any licensed child-placing agency having custody of a

child who is legally available for adoption is authorized to release the medical history, available to the Department or such agency, of the child, of the natural parents of the child and of the grandparents of the child to prospective parents of the adoptive child.

2. The release of any medical history of the natural parents of the child or the natural grandparents of the child shall be released in such a way that no person can be identified.

3. The medical history may include the information received pursuant to Section 60.5A of this title or any other medical information or records regarding the child obtained by the Department or agency during the custody of the child.

E. The medical history form completed pursuant to Section 60.5A of this title shall be released by the court upon request of and to the Department of Human Services, any certified adoption agency or licensed child-placing agency having custody of a child who is legally available for adoption, prospective adoptive parents, adoptive parents, or the child if over eighteen (18) years of age.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1130, is amended to read as follows:

Section 1130. A. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a parent to a child in the following situations:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph (4) of Section 60.5 of this title, who desires to terminate his parental rights; provided that the court finds that such termination is in the best interests of the child; or

2. A finding that a parent who is entitled to custody of the child has abandoned it; or

3. A finding that:

- a. the child is deprived, as defined in this chapter, and
- b. such condition is caused by or contributed to by acts or omissions of his parent, and
- c. termination of parental rights is in the best interests of the child, and
- d. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; or

4. A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; provided, that the incarceration of a parent shall not prevent termination of parental rights under this section; or

5. A conviction in a criminal action pursuant to the provisions of Sections 843, 845, 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or a finding in a deprived child action either that:

- a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or
- b. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or

6. A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

7. A finding that all of the following exist:

- a. the child is deprived, as defined in this chapter, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and
- d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and
- e. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

8. A finding that all of the following exist:

- a. the child is deprived as defined in this chapter, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- d. the continuation of parental rights would result in harm or threatened harm to the child, and

- e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and
- f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

B. Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits or neglects, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a misdemeanor. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a period not exceeding one (1) year. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this act.

C. An order directing the termination of parental rights is a final appealable order.

D. A parent or guardian of a child may petition the court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs 1, 2 or 4 of subsection A of this section. A prior finding by a court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of May, 1993.

Passed the House of Representatives the 20th day of May, 1993.

Speaker of the House of
Representatives