

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1579

By: Vaughn (Ray)

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 60.6, which relates to parental consent requirements for adoption and 1130, which relates to termination of parental rights; removing certain restriction for termination; modifying certain findings; adding to list of persons whose consent is not needed for termination of parental rights; specifying certain evidence and proof; and providing an effective date.

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

SECTION 1. 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; 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. The father, putative father or the mother of a child born in or out of wedlock if at the hearing provided for in Section 60.7 of this title:

- a. it is established that the respondent is the parent of the minor,
- b. it is established that said parent of the minor has been convicted of a crime and/or crimes and sentenced to a period of incarceration of not less than ten (10) years and/or said parent has been sentenced to life in prison with or without the possibility of parole,
- c. it is established that said parent has failed to prove that he has or had sufficiently attempted as determined by the Court, to exercise parental rights and duties toward the child unless he proves that prior to 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 beyond his/her imprisonment, and
- d. the court finds that it is in the best interest of the child that the adoption proceed without the consent of the natural parent of the child.

SECTION 2. 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; 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~~
- ~~e.~~ 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.~~ 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, and
- ~~e.~~ c. 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 3. This act shall become effective September 1, 1993.

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