

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2415

By: Wilt

COMMITTEE SUBSTITUTE

(Manufacture and cultivation of controlled dangerous substances - amending 10 O.S. 1991, Section 1130, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 20, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7006-1.1) - termination of parental rights - amending Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, Section 13.1) - required service of minimum percentage of sentence - amending 31 O.S. 1991, Section 1, as last amended by Section 1, Chapter 390, O.S.L. 1999 (31 O.S. Supp. 1999, Section 1) - homestead exemptions - amending 63 O.S. 1991, Section 2-415, as last amended by Section 386, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (63 O.S. Supp. 1999, Section 2-415) - trafficking in illegal drugs
-

effective date)

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1130, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 20, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7006-1.1), is amended to read as follows:

Section 7006-1.1 A. Pursuant to the provisions of the Oklahoma Children's Code, 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. The paramount consideration in proceedings concerning termination of parental rights shall be the health, safety and best interests of the child:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in paragraph 4 of subsection B of Section 7503-2.1 of this title, who desires to terminate such parent's parental rights; provided that the court finds that such termination is in the best interests of the child;

2. A finding that a parent who is entitled to custody of the child has abandoned the child. For purposes of this paragraph the term "abandonment" includes, but is not limited to, the following:

- a. the parent has willfully left the child alone or in the possession of another who is not the parent of the child without identifying the child or furnishing a means of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the child alone or in the possession of another who is not the parent of the child and expressed a willful intent by words, actions, or omissions not to return for the child, or
- c. the parent fails to maintain a significant relationship with the child through visitation or communication for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained a significant relationship with the child;

3. A finding that the child is an abandoned infant;

4. A finding that the parent of a child:

- a. has voluntarily placed physical custody of the child with the Department of Human Services or with a child-placing agency for out-of-home placement,
- b. has not complied with the placement agreement, and
- c. has not demonstrated during such period a firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child;

5. A finding that:

- a. the child has been adjudicated to be deprived, and
- b. such condition is caused by or contributed to by acts or omissions of the 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 adjudication of a child deprived has been corrected although the parent has been given not less than the time specified by Section 7003-5.5 of this title to correct the condition;

6. A finding that a subsequent child has been born to a parent whose parental rights to any other child has been terminated by the court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other child has not been corrected. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney or the child's attorney;

7. A finding that a parent who does not have custody of the child has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights, willfully failed, refused or neglected to contribute to the support of such child:

- a. in substantial compliance with an order 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 an order.

Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

8. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes;

9. A conviction in a criminal action that the parent:

- a. caused the death of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child,
- b. caused the death of a sibling of the child as result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,
- c. committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,
- d. committed voluntary manslaughter of another child of the parent, or aided or abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or
- e. committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent;

10. 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,
- b. the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse,
 - c. 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,
 - d. the child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household where the child resides, by the parent of the child, or
 - e. the parent has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;

11. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;

12. A finding that all of the following exist:

- a. the child has been adjudicated deprived, 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 incarcerated, 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 parental rights;

13. A finding that all of the following exist:

- a. the child has been adjudicated deprived, 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 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 or her parental rights;

14. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's attention;

15. A child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty-two (22) months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the adjudication date, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

16. The parent of the child:

- a. has been convicted of the crime of manufacturing a controlled dangerous substance, and
- b. the child was present while the parent was manufacturing the controlled dangerous substance.

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

C. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 2. AMENDATORY Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, Section 13.1), is amended to read as follows:

Section 13.1 Persons convicted of first degree murder as defined in Section 701.9 of ~~Title 21 of the Oklahoma Statutes~~ this title, robbery with a dangerous weapon as defined in Section 801 of ~~Title 21 of the Oklahoma Statutes~~ this title, first degree rape as defined in Section 1115 of ~~Title 21 of the Oklahoma Statutes~~ this title, first degree arson as defined in Section 1401 of ~~Title 21 of the Oklahoma Statutes~~ this title, first degree burglary as defined in Section 1436 of ~~Title 21 of the Oklahoma Statutes~~ this title, bombing as defined in Section 1767.1 of ~~Title 21 of the Oklahoma Statutes~~ this title, child abuse as defined in Section 7115 of Title 10 of the Oklahoma Statutes, forcible sodomy as defined in Section 888 of ~~Title 21 of the Oklahoma Statutes~~ this title, child pornography as defined in Section 1021.2 or 1021.3 of ~~Title 21 of the Oklahoma Statutes~~ this title, child prostitution as defined in Section 1030 of ~~Title 21 of the Oklahoma Statutes~~ this title, lewd molestation of a child as defined in Section 1123 of ~~the Oklahoma Statutes~~ this title, manufacturing of a controlled dangerous substance, as defined in Section 2-401 of Title 63 of the Oklahoma Statutes, a second conviction of trafficking in illegal drugs as defined in Section 2-415 of Title 63 of the Oklahoma Statutes, a second conviction of cultivation of plants from which controlled dangerous substances may be derived as defined in Section 2-509 of Title 63 of the Oklahoma Statutes shall be required to serve not

less than eighty-five percent (85%) of any sentence of imprisonment imposed by the judicial system prior to becoming eligible for consideration for parole. Persons convicted of these offenses shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.

SECTION 3. AMENDATORY 31 O.S. 1991, Section 1, as last amended by Section 1, Chapter 390, O.S.L. 1999 (31 O.S. Supp. 1999, Section 1), is amended to read as follows:

Section 1. A. Except as otherwise provided in this title and notwithstanding subsection B of this section, the following property shall be reserved to every person residing in the state, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as herein provided:

1. The home of such person, provided that such home is the principal residence of such person;
2. A manufactured home, provided that such manufactured home is the principal residence of such person;
3. All household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;
4. Any lot or lots in a cemetery held for the purpose of sepulcher;
5. Implements of husbandry necessary to farm the homestead;
6. Tools, apparatus and books used in any trade or profession of such person or a dependent of such person;
7. All books, portraits and pictures that are held primarily for the personal, family or household use of such person or a dependent of such person;
8. The person's interest, not to exceed Four Thousand Dollars (\$4,000.00) in aggregate value, in wearing apparel that is held

primarily for the personal, family or household use of such person or a dependent of such person;

9. All professionally prescribed health aids for such person or a dependent of such person;

10. Five milk cows and their calves under six (6) months old, that are held primarily for the personal, family or household use of such person or a dependent of such person;

11. One hundred chickens, that are held primarily for the personal, family or household use of such person or a dependent of such person;

12. Two horses and two bridles and two saddles, that are held primarily for the personal, family or household use of such person or a dependent of such person;

13. Such person's interest, not to exceed Three Thousand Dollars (\$3,000.00) in value, in one motor vehicle;

14. One gun, that is held primarily for the personal, family or household use of such person or a dependent of such person;

15. Ten hogs, that are held primarily for the personal, family or household use of such person or a dependent of such person;

16. Twenty head of sheep, that are held primarily for the personal, family or household use of such person or a dependent of such person;

17. All provisions and forage on hand, or growing for home consumption, and for the use of exempt stock for one (1) year;

18. Seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days, except as provided in Title 12 of the Oklahoma Statutes in garnishment proceedings for collection of child support;

19. Such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and any dependent of such person;

20. Subject to the Uniform Fraudulent Transfer Act, Section 112 et seq. of Title 24 of the Oklahoma Statutes, any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Acts of Congress; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under the Uniform Fraudulent Transfer Act. "Retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements qualified for tax exemption purposes permitted under present Acts of Congress include defined contribution plans and defined benefit plans as defined under the Internal Revenue Code ("IRC"), individual retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRC Section 403(a) annuity plans, IRC Section 403(b) annuities, and eligible state deferred compensation plans governed under IRC Section 457. This provision shall be in addition to and not a limitation of any other provision of the Oklahoma Statutes which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This provision shall be effective for retirement plans and arrangements in existence on, or created after the effective date of this act;

21. Such person's interest in a claim for personal bodily injury, death or workers' compensation claim, for a net amount not

in excess of Fifty Thousand Dollars (\$50,000.00), but not including any claim for exemplary or punitive damages;

22. Funds in an individual development account established pursuant to the provisions of Section 251 et seq. of Title 56 of the Oklahoma Statutes;

23. Any interest in a Roth individual retirement account created pursuant to the provisions of Section 408A of the Internal Revenue Code, 26 U.S.C., Section 408A;

24. Any interest in an education individual retirement account created pursuant to the provisions of Section 530 of the Internal Revenue Code, 26 U.S.C., Section 530; and

25. Any amount received pursuant to the federal earned income tax credit.

B. No natural person residing in this state may exempt from the property of the estate in any bankruptcy proceeding the property specified in subsection (d) of Section 522 of the Bankruptcy Reform Act of 1978, Public Law 95-598, 11 U.S.C.A. 101 et seq., except as may otherwise be expressly permitted under this title or other statutes of this state.

C. In no event shall any property under paragraph 5 or 6 of subsection A of this section, the total value of which exceeds Five Thousand Dollars (\$5,000.00), of any person residing in this state be deemed exempt.

D. The property specified in subsection A of this section shall not be exempt from forfeiture pursuant to the Uniform Controlled Dangerous Substances Act if the property was used in the manufacture or cultivation of a controlled dangerous substance.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-415, as last amended by Section 386, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (63 O.S. Supp. 1999, Section 2-415), is amended to read as follows:

Section 2-415. A. The provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of this title, shall apply to persons convicted of violations with respect to the following substances:

1. Marihuana;
2. Cocaine or coca leaves;
3. Heroin;
4. Amphetamine or methamphetamine;
5. Lysergic acid diethylamide (LSD);
6. Phencyclidine (PCP); or
7. Cocaine base, commonly known as "crack" or "rock".

B. Except as otherwise authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person to:

1. Knowingly distribute, manufacture, bring into this state or possess a controlled substance specified in subsection A of this section in the quantities specified in subsection C of this section; or

2. Possess any controlled substance with the intent to manufacture a controlled substance specified in subsection A of this section in quantities specified in subsection C of this section; or

3. Use or solicit the use of services of a person less than eighteen (18) years of age to distribute or manufacture a controlled dangerous substance specified in subsection A of this section in quantities specified in subsection C of this section.

Violation of this section shall be known as "trafficking in illegal drugs".

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the controlled substance to be an amount described in subsection C of this section shall be punished under the provisions appropriate for

the amount of controlled substance represented, regardless of the actual amount.

C. In the case of a violation of the provisions of subsection B of this section, involving:

1. Marihuana:

- a. twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. one thousand (1,000) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

2. Cocaine or coca leaves:

- a. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. three hundred (300) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

3. Heroin:

- a. ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or
- b. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

4. Amphetamine or methamphetamine:

- a. ~~twenty (20)~~ five (5) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Two Hundred Thousand Dollars (\$200,000.00), or
- b. ~~two hundred (200)~~ fifty (50) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

5. Lysergic acid diethylamide (LSD):

- a. if the quantity involved is not less than fifty (50) dosage units and not more than one thousand (1,000) dosage units, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. if the quantity involved is more than one thousand (1,000) dosage units, such violation shall be

punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00);

6. Phencyclidine (PCP):

- a. one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Twenty Thousand Dollars (\$20,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or
- b. eight (8) ounces or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00); and

7. Cocaine base:

- a. five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. fifty (50) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00).

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection A of this section in a quantity specified in subsection C of this section

shall, in addition to any fines specified by this section, be punishable by a term of imprisonment as follows:

1. Not less than twice the term of imprisonment provided for in Section 2-401 of this title;

2. If the person has previously been convicted of one violation of this section or has been previously convicted of a felony violation of the Uniform Controlled Dangerous Substances Act arising from separate and distinct transactions, not less than three times the term of imprisonment provided for in Section 2-401 of this title; and

3. If the person has previously been convicted of two or more violations of this section or any provision of the Uniform Controlled Dangerous Substances Act which constitutes a felony, or a combination of such violations arising out of separate and distinct transactions, life without parole.

The terms of imprisonment specified in this subsection shall not be subject to statutory provisions for suspension, deferral or probation, or state correctional institution earned credits accruing from and after November 1, 1989, except for the achievement earned credits authorized by subsection F of Section 138 of Title 57 of the Oklahoma Statutes. To qualify for such achievement credits, such inmates must also be in compliance with the standards for Class level 2 behavior, as defined in subsection C of Section 138 of Title 57 of the Oklahoma Statutes.

Persons convicted of violations of this section shall not be eligible for appeal bonds.

SECTION 5. This act shall become effective November 1, 2000.

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