

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2304

By: Roach

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Sections 7003-2.1 and 7003-3.8, which relate to the Oklahoma Children's Code; authorizing the Department of Human Services to take certain children into protective custody; modifying jury trial requirements at adjudication; requiring jury trial for termination of parental rights proceeding; amending 10 O.S. 2001, Sections 7501-1.3 and 7505-6.2, which relate to the Oklahoma Adoption Code and children; clarifying intent of sections; updating language; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-2.1, is amended to read as follows:

Section 7003-2.1 A. A child may be taken into ~~protective~~ custody prior to the filing of a petition:

1. By a peace officer or employee of the court, without a court order if the child's surroundings are such as to endanger the welfare of the child or if continuation of the child in the child's home is contrary to the health, safety or welfare of the child;

2. By an order of the district court issued upon the application of the office of the district attorney. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to

abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal. If verbal, a written application shall be submitted to the district court within one (1) judicial day from the issuance of the order. When an order issued by the district court pursuant to this paragraph places the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 7003-2.4 of this title, an employee of the Department may take the child into custody if the child is located in an educational or medical facility, provided the child can be taken into custody without a breach of the peace; otherwise, the child shall be taken into custody by a peace officer or employee of the court;

3. By order of the district court when the child is in need of medical or mental health treatment in order to protect the child's health, safety or welfare and the child's parent, legal guardian, custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action pursuant to this article. The court shall specifically include in the order authorization for such medical or mental health treatment as it deems necessary. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child; and

4. Pursuant to the provisions of Section ~~2~~ 7115.1 of this ~~act~~ title.

B. Whenever a child is taken into protective custody:

1. Such child may be taken to a children's shelter located within the county where protective custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court;

2. Except as otherwise provided by subsection C of this section, such child may be taken before a judge of the district court for the purpose of obtaining an order for protective custody. The court may place the child in the custody of the Department of Human Services. The Department may place the child in a kinship foster care home, another foster home or other suitable placement that is determined by the Department to meet the needs of the child;

3. Such child may be taken directly to or retained in a health care facility for medical treatment, when it reasonably appears to the peace officer or court employee that the child is in need of emergency medical treatment to maintain the child's health, or as otherwise directed by the court; or

4. Such child may be taken directly to or retained in a mental health facility for mental health care, or inpatient mental health evaluation or inpatient mental health treatment, in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, when it reasonably appears to the peace officer or court employee that the child is in need of emergency mental health care to preserve the child's health, or as otherwise directed by the court; and

5. Except as otherwise provided by subsection C of this section, the district court of the county where the protective custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into protective custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

C. The court may provide, in an order issued pursuant to this section or by a standing order or rule, for the disposition of children taken into protective custody and notification of the protective custody. Such order or rule shall be consistent with the provisions of subsection B of this section, but may also:

1. Designate a licensed child care facility other than a children's shelter appropriate for the temporary care of deprived children if such facility is willing to provide care;

2. Authorize the release of a child from protective custody in accord with such criteria as the court specifies or the placement of a child with such responsible persons as the court may designate and who are willing to provide care for the child pending further proceedings; and

3. Require such notice to the court concerning the assumption of protective custody and the disposition of children taken into protective custody as the court may direct.

D. No child taken into protective custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious, or dissolute persons.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-3.8, is amended to read as follows:

Section 7003-3.8 ~~In adjudicatory hearings to determine if a child is deprived, any person~~ A parent entitled to service of summons ~~or,~~ the state or the child shall have the right to demand a trial by jury, ~~which~~ only in the following circumstances:

1. When the initial petition to determine if a child is deprived also contains a request for termination of parental rights;
or

2. When, following a hearing in which the child is adjudicated deprived, a request for termination of parental rights is filed by the state or the child.

The demand for a jury trial shall be granted ~~as in other cases,~~ unless waived, or the ~~judge~~ court on ~~his~~ its own motion may call a jury to try any such case. Such jury shall consist of six (6) persons.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7501-1.3, is amended to read as follows:

Section 7501-1.3 As used in the Oklahoma Adoption Code:

1. "Abandonment" includes, but is not limited to, the following:

- a. the parent has left the minor alone or in the care of another who is not the parent of the minor without identifying the minor or furnishing a means of identification for the minor, the whereabouts of the parents are unknown, and the minor's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the minor alone or in the care of another who is not the parent of the minor and expressed a willful intent by words, actions, or omissions not to return for the minor, or
- c. the parent fails to maintain a substantial and positive relationship with the minor 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. For purposes of this section, "establish and/or maintain a substantial, positive relationship" includes but is not limited to:
 - (1) frequent and regular contact with the minor through frequent and regular visitation or frequent, regular communication to or with the minor, and
 - (2) exercising parental rights and responsibilities. Incidental or token visits or communications shall not be sufficient to establish or maintain

a substantial and positive relationship with the minor.

The term "abandonment" shall not include when a parent has relinquished a minor to or placed the minor in the custody of a licensed child-placing agency or other court-appointed individual;

2. "Adoptee" means an individual who is adopted or is to be adopted;

3. "Adult" means an individual who has attained eighteen (18) years of age;

4. "Minor" means any person who has not attained the age of eighteen (18) years;

5. "Child-placing agency" means any child welfare agency licensed pursuant to the Oklahoma Child Care Facilities Licensing Act and authorized to place minors for adoption;

6. "Contested proceeding" means any proceeding pursuant to the Oklahoma Adoption Code in which an interested party enters an appearance to contest the petition;

7. "Department" means the Department of Human Services;

8. "Direct placement adoption" means any adoption in which the minor is not placed for adoption by the Department of Human Services or a child-placing agency;

9. "Guardian" means an individual, other than a parent, appointed by a court to be the guardian of the person of a minor;

10. "Parent" means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term "parent" does not include an individual whose parental relationship to a child has been terminated;

11. "Permanent relinquishment" means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Human Services or any person with the

assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption;

12. "Putative father" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception;

13. "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia; and

14. "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7505-6.2, is amended to read as follows:

Section 7505-6.2 A. Before the final hearing on the petition for adoption, the following must be filed in the proceeding when available:

1. A certified copy of the birth certificate or other record of the date and place of birth of the minor;

2. Any consent, extra judicial consent, or permanent relinquishment, with respect to the minor that has been executed, and any written verifications required by the Oklahoma Adoption Code from the individual before whom a consent, extra judicial consent, or permanent relinquishment was executed;

3. A certified copy of any court order terminating the parental rights of the minor's parents or guardian;

4. A certified copy of any existing court order or the petition in any pending proceeding concerning custody of or visitation with the minor;

5. A copy of any home study performed on the petitioners, including the home studies required by Sections 7505-5.1, 7505-5.2 and 7505-5.3 of this title;

6. In an adoptive placement in which the adoptive parents or birth parents were not both legal residents of Oklahoma prior to the initiation of the adoption process and the parties are not otherwise exempt from the Interstate Compact on the Placement of Children, a copy of the approval by both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children;

7. A copy of any agreement with a public agency to provide a subsidy for the benefit of a minor with a special need;

8. A verified document by the Department, or child-placing agency that placed the minor for adoption, or the attorney for the adoptive parent in direct placement adoption, or the person who is placing the minor for adoption in a direct placement adoption in which the adoptive parent is not represented by an attorney, stating that the petitioner for adoption has been furnished a copy of the medical and social history report, pursuant to Section 7504-1.2 of this title;

9. The name and address, if known, of any person who is entitled to receive notice of the proceeding for adoption;

10. The affidavit of expenditures;

11. A copy of the medical and social history report, as required by subsection D of Section 7504-1.2 of this title, including the initial report and all supplemental reports, if any, prepared pursuant to subsection C of Section 7504-1.2 of this title;

12. Affidavits of nondisclosure, if any, signed by a biological parent;

13. a. A copy of the state criminal background check, national fingerprint-based criminal background check, if required by law, a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act, and a search of the child abuse and neglect files maintained for review by authorized entities by the Department of Human Services pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, or
- b. If the adoptive petitioners are not legal residents of Oklahoma and the sending state has comparable and accessible checks and searches as specified by subparagraph a of this paragraph, a copy of the approval of both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children or verification that this adoptive placement is otherwise exempt from the Interstate Compact on the Placement of Children; and

14. Any such other document or information required by the court.

B. If an item required by subsection A of this section is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence.

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.

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