

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 709

By: Cain

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1107, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, Section 7003-2.1), which relates to protective custody; amending the conditions under which a child may be taken into protective custody prior to filing of petition; providing for nonprosecution of parent for specified crimes under certain conditions; requiring certain entities to take possession of a child without a court order; requiring specified actions of entity when and after child is relinquished; requiring certain actions of the Department of Human Services; defining terms; providing immunity for medical services providers and child rescuers under certain circumstances; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 374, O.S.L. 2000 (10 O.S. Supp. 2000, 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; ~~and~~

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 of this act.

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7115.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A parent subject to the provisions of this act shall not be prosecuted for child abandonment or child neglect under the provisions of Sections 851, 852, 853, 858.1 and 858.3 of Title 21 of the Oklahoma Statutes, subsections C and D of Section 7115 of Title 10 of the Oklahoma Statutes, paragraph 3 of subsection B of Section 7102 of Title 10 of the Oklahoma Statutes, or any other statute which makes child abandonment or child neglect a crime, when the allegations of child abandonment or child neglect are based solely on the relinquishment of a child thirty (30) days or younger to a medical services provider or a child rescuer as defined in this section.

B. The following entities shall, without a court order, take possession of a child who is thirty (30) days old or younger if the child is voluntarily delivered to the entity by the parent of the child and the parent did not express an intent to return for the child:

1. A medical services provider; or
2. A child rescuer.

C. Any entity identified in subsection B of this section to which a parent seeks to relinquish a child pursuant to the provisions of this section shall:

1. Request, but not demand, any information about the child that the parent is willing to share. The entity is encouraged to ask about, but not demand, the details of any relevant medical history relating to the child or the child's parents. The entity shall respect the wish of the parent if the parent desires to remain anonymous; and

2. Provide the parent with printed information relating to the parents' rights, including both parents, with respect to reunification with the child and sources of counseling for the parents, if desired.

D. Once a child has been relinquished to any entity identified in subsection B of this section, the entity receiving the child shall:

1. Perform or provide for the performance of any act necessary to protect the physical health or safety of the child; and

2. Notify the local office of the Department of Human Services that a parent of a child who is thirty (30) days of age or younger, in the best judgment of the receiving entity, has relinquished such child and that the entity has taken possession of the child.

E. Upon being made aware that a medical services provider or child rescuer has possession of a child under the provisions of this act, the Department of Human Services shall immediately check with law enforcement authorities to determine if a child has been reported missing and whether the missing child could be the relinquished child.

F. The Department of Human Services shall design and disseminate:

1. A simplified form for the recording of medical information a relinquishing parent wishes to share with the entity to whom the child is being relinquished;

2. Easily readable printed information relating to the parents' rights, including both parents, with respect to reunification with the child, including information indicating how the parents could contact the appropriate entities regarding reunification and sources of counseling for the relinquishing parents; and

3. Media information, including printed materials, for the purpose of advising citizens of the state of the provisions of this act.

G. For purposes of this section:

1. "Medical services provider" means a person authorized to practice the healing arts, including a physician's assistant or nurse practitioner, a registered or practical nurse and a nurse aide; and

2. "Child rescuer" means any employee or other designated person on duty at a police station, fire station, child protective agency, or hospital or other medical facility.

H. A medical services provider or child rescuer with responsibility for performing duties pursuant to this section is immune from any criminal liability that otherwise might result from its actions, if acting in good faith in receiving a relinquished child. In addition, such medical providers are immune from any civil liability that otherwise might result from merely receiving a relinquished child.

SECTION 3. This act shall become effective July 1, 2001.

SECTION 4. 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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