

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 1043

By: Leist of the House

and

Shurden of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 5A, which relates to visitation rights of siblings; creating a rebuttable presumption that visitation between siblings is in their best interests; deleting certain restrictions; setting conditions for determining best interests of a child; expanding certain visitation; modifying venue; modifying definition; providing for certain placement of siblings; setting forth conditions; providing for placement of a child into custody in certain cases; providing penalty for certain false reports; amending 10 O.S. 2001, Section 7003-2.1, as last amended by Section 5 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, which relates to children taken into custody; adding to list of when a child may be taken into custody; amending 10 O.S. 2001, Sections 7503-1.1 and 7510-1.5, as amended by Section 14, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7510-1.5), which relate to the Oklahoma Adoption Code; modifying list of persons who may adopt a child; modifying certain conditions for eligibility for subsidized adoption assistance; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 5A, is amended to read as follows:

Section 5A. A. ~~Upon the death of a parent of an unmarried minor child, a parent of the unmarried minor child or a parent of a minor sibling of the unmarried minor child may file a verified petition to commence an action requesting rights of visitation between the siblings. The court may award reasonable rights of~~

~~visitation between the siblings if the court determines that visitation is in the best interests of the siblings~~ 1. There shall be a rebuttable presumption that visitation between a child and his or her siblings is in the best interests of such child.

2. Pursuant to the provisions of this section, in any action relating to the custody of a minor child who is placed apart from his or her siblings, the court shall require or provide for the reasonable visitation, or if necessary, supervised visitation, between the child and the siblings of the child unless the court determines that the visitation is not in the best interest of the child or of the siblings of the child.

B. In determining whether visitation is in the best interests of the child and the siblings of the child, the court shall ~~consider~~ determine:

~~1. The willingness of the parents of the siblings to encourage or maintain a relationship between the siblings;~~

~~2. The length and quality of the relationship between the siblings including, but not limited to, whether the siblings previously resided together in the same household;~~

~~3. The time which has elapsed since the siblings last had contact;~~

4. The preference of the child and the siblings of the child, if they are of sufficient maturity to express a preference;

~~5. The effect that visitation will have on the relationship between the siblings and their parents;~~

~~6.~~ 2. The mental and physical health of the child and the siblings of the child; and

~~7.~~ All 3. Whether the child or any sibling of the child may physically, mentally, or emotionally harm another during a visit, and supervision would be inadequate to eliminate the risk of such harm; and

4. Any other factors appropriate to the particular circumstances.

C. The district courts are vested with jurisdiction to issue orders granting visitation between siblings and to modify and enforce ~~these~~ the orders.

D. Notice as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be given to all parents of the siblings.

E. Venue of an action under this section shall be in the county where the siblings reside or, if the siblings reside in different counties, in the county where the ~~respondent~~ petitioner resides.

F. The court may determine the location for and method of visitation ordered pursuant to this section and may require any transportation costs or other costs arising from visitation ~~to~~ be paid by ~~a~~ any parent or parents of the siblings as the court deems equitable.

G. Any visitation rights granted pursuant to this section before the adoption of a sibling shall automatically terminate if the sibling is adopted by a person other than a stepparent or grandparent of the sibling or other person related to the sibling within the third degree by blood or marriage.

H. In any action for sibling visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

I. As used in this section:

1. "Sibling" means sister, brother, stepsister, stepbrother, halfsister, halfbrother, adopted sister, or adopted brother; and

2. "Parent" means biological parent, stepparent, adoptive parent, legal custodian, or legal guardian of a minor.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.1A of Title 10, unless there is created a duplication in numbering, reads as follows:

In every case involving the nonparental custody or guardianship of two or more children who are siblings, every reasonable attempt should be made to place the siblings in the same home. If the siblings are separated, each sibling shall be allowed visitation with the other siblings pursuant to Section 5A of Title 10 of the Oklahoma Statutes; provided, however, the best interests of each sibling shall be the standard for determining whether they should be placed in the same home, or allowed visitation or supervised visitation with other siblings.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.4A of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Whenever a report has been made to a peace officer regarding the custody of a child subject to Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, if the peace officer is unable to determine the proper custodian of the child under Sections 21.2 through 21.4 of Title 10 of the Oklahoma Statutes, the peace officer shall take the child into custody pursuant to the Oklahoma Children's Code.

B. Any person who willfully and knowingly files a false report pursuant to the provisions of this section, upon conviction thereof, shall be punished according to Section 589 of Title 21 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7003-2.1, as last amended by Section 5 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 7003-2.1 A. Pursuant to the provisions of this section, a child may be taken into 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.

a. 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 in the following limited circumstance:

(1) the child is located in an educational or day care facility,

(2) it is determined that assumption of the child's custody from such facility is necessary to protect the child from risk of endangerment, and

(3) assumption of the child's custody from the facility can occur without a breach of the peace, otherwise the child shall be taken into custody by a peace officer or employee of the court.

b. It is the intent of the Legislature that emergency custody of a child pursuant to a court order shall not occur at an educational or day care facility unless it is determined necessary to avoid endangerment to the child. The Department shall establish specific policies when an employee of the Department may take a child into emergency custody pursuant to a court order at an educational or day care facility;

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 7115.1 of this title; and

5. Pursuant to the provisions of Section 3 of this act.

B. Whenever a child is taken into custody pursuant to subsection A of this section:

1. The child may be taken to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of

this section shall be taken to a location as provided in the placement protocol;

2. Except as otherwise provided by subsection C of this section, the child may be taken before a judge of the district court for the purpose of obtaining an order for emergency custody. The court may place the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 7003-2.4 of this title. 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, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

3. The 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. The child may be taken directly to or retained in a mental health or substance abuse treatment facility for evaluation or inpatient treatment, in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors 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 emergency custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into 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 emergency custody and notification of the 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, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

2. Authorize the release of a child from 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 custody and the disposition of children taken into custody as the court may direct.

D. 1. The Department of Human Services shall establish by rule a placement protocol for at-risk infants.

2. Factors for determining at-risk infants include, but are not limited to:

- a. premature infants,
- b. history of respiratory distress,
- c. oxygen dependency,

- d. diagnosis requiring special care beyond routine infant care,
- e. infants under six (6) weeks of age, and
- f. medical conditions or illnesses of the infants that without protocol placements may result in increased episodes of illness, prolonged hospitalization and increased cost for care.

3. Appropriate placement pursuant to this subsection of at-risk infants shall include, but not be limited to, foster care, approved kinship foster care and health care facilities. A children's shelter shall not be deemed to be an appropriate placement for at-risk infants unless the shelter meets the placement protocol.

4. If the at-risk infant is in a hospital setting, the infant may be placed in another appropriate placement pursuant to this subsection, only upon the release of the infant from the hospital by the infant's primary physician.

E. No child taken into 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 5. AMENDATORY 10 O.S. 2001, Section 7503-1.1, is amended to read as follows:

Section 7503-1.1 The following persons are eligible to adopt a child:

1. A husband and wife jointly if both spouses are at least twenty-one (21) years of age;

2. Either the husband or wife if both spouses are at least twenty-one (21) years of age with the written consent of the other spouse ~~is a parent or a relative of the child;~~

3. An unmarried person who is at least twenty-one (21) years of age; or

4. A married person at least twenty-one (21) years of age who is legally separated from the other spouse.

SECTION 6. AMENDATORY 10 O.S. 2001, Section 7510-1.5, as amended by Section 14, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7510-1.5), is amended to read as follows:

Section 7510-1.5 A. 1. When a parent or parents are found and approved for adoption of a child who is determined by the Department of Human Services to be eligible for adoption assistance pursuant to the Oklahoma Adoption Assistance Act, and before the final decree of adoption is entered, there must be a signed written agreement between the prospective adoptive parent or parents and the Department.

2. Adoption assistance in individual cases may commence with the adoptive placement or at the time of finalization of the adoption. Adoption assistance may be for special services only, or for monthly money payments, and either for a limited period, or for a long term, or for any combination of the foregoing.

Eligibility for and the rate of monthly adoption assistance payments shall be determined by the Department in accordance with rules promulgated by the Commission for Human Services.

B. When an otherwise eligible child is determined to have a causative, preexisting condition which was not identified or known prior to the legal finalization of the adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption assistance agreement may be approved by the Department after the final decree of adoption has been entered. In the event an adoption assistance agreement is approved that provides for monthly adoption assistance payments, the adoptive parents may also be entitled to receive retroactive adoption assistance payments for a period not to exceed the two (2) months prior to the date the adoption assistance agreement was approved.

C. Any child who met the requirements of the provisions of Sections 7510-1.2 and 7510-1.4 of this title, and was determined eligible for Oklahoma adoption assistance with respect to a prior adoption, and is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, shall be eligible for Oklahoma adoption assistance with respect to any subsequent adoption.

D. 1. When adoption assistance benefits are for more than one (1) year, the adoptive parent or parents shall present an annual sworn certification that the adopted child remains under their care and that the conditions that caused the child to be initially approved for benefits continue to exist.

2. The adoptive parent or parents shall at all times keep the Department informed of circumstances which would make them ineligible for such assistance payments or eligible for assistance payments in a different amount.

3. The Department is authorized and directed to make a review of each adoption assistance agreement annually to assure that the parents are fulfilling their obligations under the agreement.

4. No payment may be made to any parents with respect to any child who has attained the age of eighteen (18) years, except where the Department determines that the child has a physical or mental handicap which warrants the continuation of assistance until the child reaches the age of ~~twenty-one (21)~~ nineteen (19) years.

5. Termination or modification of the adoption assistance agreement may be requested by the adoptive parent or parents at any time.

6. No payment may be made to adoptive parents if the Department determines that the parents are no longer legally responsible for the support of the child or that the child is no longer receiving any financial support from such parents.

E. A child for whom an adoption assistance agreement has been reached with the Department shall remain eligible and receive adoption assistance benefits regardless of the domicile or residence of the adopting parent or parents at any given time.

F. All records regarding adoption assistance shall be confidential and may be disclosed only in accordance with the provisions of the Oklahoma Adoption Code.

SECTION 7. RECODIFICATION 43 O.S. 2001, Sections 112.2, as last amended by Section 25 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, Section 8, Chapter 400, O.S.L. 2002 and 113, as amended by Section 1, Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2002, Sections 112.3 and 113), shall be renumbered as Sections 110.2, 110.3 and 110.4, respectively, of Title 43 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 8. This act shall become effective November 1, 2003.

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