

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1734

By: Wells, Adair, Adkins,
Askins, Blackburn,
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Braddock, Brannon, Carey,
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McIntyre, Mitchell, Morgan
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O'Neal, Pettigrew, Plunk,
Roan, Roberts, Smaligo,
Smith (Dale), Smithson,
Staggs, Stanley, Sweeden,
Taylor, Toure, Trebilcock,
Turner, Tyler, Walker and
Wilson of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; creating the Bryar Wheeler Act; amending 10 O.S. 2001, Section 21.1, as last amended by Section 3 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, which relates to custody, guardianship and visitation of children; modifying certain requirements obtaining custody of, guardianship with, or visitation with certain children; requiring certain consideration by the court; updating language; requiring courts to make certain determinations; modifying circumstances that will constitute a rebuttable presumption; prohibiting certain visitation, guardianship and custody; amending 10 O.S. 2001, Section 1211, which relates to training requirements for certain personnel and persons; requiring inclusion of certain areas of training concerning certain visitation situations under certain circumstances for certain persons; modifying contents of rules; defining certain terms; amending 43 O.S. 2001, Section 112.2, as last amended by Section 25 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, which relates to evidence of ongoing domestic abuse; expanding consideration of court in certain

situations; removing requirement for ongoing domestic abuse designation; providing for court determinations; providing for a rebuttable presumption under certain circumstances; providing for certain reviews by court; defining certain terms; adding circumstances that shall constitute a rebuttable presumption; providing for the ordering of supervised visitation of a child in certain situation for certain persons; prohibiting visitation, custody and guardianship in certain instances; defining certain terms; creating the Oklahoma Child Supervised Visitation Program; setting public policy; defining terms; authorizing certain actions by certain judges; providing for appointment of certain district supervised visitation teams; prohibiting certain actions; setting certain time periods; providing duties; providing for certain program volunteers; providing for amount of fee for certain visitation; providing for application of certain volunteers; listing certain information; providing for certain training for volunteers; providing for certain site locations; providing for contents; providing for certain record-keeping and information; providing for certain copying of materials; providing for confidentiality of certain information; providing for development of certain forms; requiring certain information on forms and brochure; providing for distribution of forms; providing for certain action under certain circumstances; providing for liability; providing for membership; making section not applicable to certain state acts; amending 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), which relates to adoption subsidies; providing for certain exemptions; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of this act shall be known and may be cited as the "Bryar Wheeler Act".

SECTION 2. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 3 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 21.1 A. ~~Custody~~ Except as otherwise provided by this section, custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:

1. A parent or to both parents jointly ~~except as otherwise provided in subsection B of this section;~~

2. A grandparent;

3. A person who was indicated by the wishes of a deceased parent;

4. A relative of either parent;

5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or

6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. ~~Subject~~ In addition to subsection ~~E~~ D of this section, when a parent having ~~physical custody and providing support to~~ of a child becomes deceased or when ~~the~~ custody of a child is judicially removed from ~~such~~ the parent having custody of the child, the court may only deny the noncustodial parent custody of the child or guardianship of the child if:

1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:

(1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

(2) according to such parent's financial ability to contribute to the child's support if no provision

for support is provided in a decree of divorce or an order of modification subsequent thereto, and

b. The denial of custody or guardianship is in the best interest of the child;

2. The noncustodial parent has abandoned the child as such term is defined by Section 7006-1.1 of this title;

3. The parental rights of the noncustodial parent have been terminated;

4. The noncustodial parent has been convicted of ~~any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or~~ any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;

5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code ~~as a result of the actions of the noncustodial parent~~ and ~~such~~ the noncustodial parent has not successfully completed ~~any required~~ a service or treatment plan if required by the court; or

6. The court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The court ~~may~~ shall consider the preference of the child in awarding custody of the child ~~if the child is of sufficient age to form an intelligent preference pursuant to Section 113 of Title 43 of the Oklahoma Statutes.~~

D. ~~In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.~~

~~E.~~ 1. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody or who has custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- b. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. has been convicted of a felony involving drug or alcohol abuse within the past five (5) years,
- d. has been convicted of domestic abuse within the past five (5) years,
- e. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, ~~or~~
- ~~e.~~ f. is residing with a person who has been ~~previously~~ convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. is residing with a person who has been convicted of domestic abuse within the past five (5) years.

2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, or guardianship ~~or unsupervised visitation~~ granted to:

- a. a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,

- b. a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. a person who has been convicted of a felony involving drug or alcohol abuse within the past five (5) years,
- d. a person who has been convicted of domestic abuse within the past five (5) years,
- e. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, ~~or~~
- ~~e.~~ f. a person who is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. a person who is residing with a person who has been convicted of domestic abuse within the past five (5) years.

3. Custody of, guardianship of, or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to an imminent risk of material harm.

E. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 1211, is amended to read as follows:

Section 1211. A. 1. The Supreme Court is required to establish by rule, education and training requirements for judges, associate judges, special judges, and referees who have juvenile

court docket responsibility. Rules shall include, but not be limited to, education and training relating to risk factors which may identify domestic abuse and potential violence, establishing safe visitation and supervised arrangements and standards for a child and parties involved in a court-ordered visitation with particular emphasis on visitations and supervised visitation arrangements when either party is an alcohol-dependent person or a drug-dependent person.

2. The Administrative Director of the Courts shall be responsible for developing and administering procedures and rules for such courses for judicial personnel.

B. All judges having juvenile or domestic docket responsibility shall attend at least twelve (12) hours of training per year pertinent to issues relating to juvenile law, child abuse and neglect, domestic abuse issues and other issues relating to children such as foster care and parental divorce, establishing safe visitation and supervised visitation arrangements. The Administrative Office of the Courts shall monitor the attendance of judges having juvenile docket responsibility at such training.

C. District attorneys and assistant district attorneys whose duties include responsibility for the juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The District Attorneys Council shall be responsible for developing and administering procedures and rules for such courses for district attorneys and assistant district attorneys.

D. Any public defender, or assistant public defender, whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The public defender shall be responsible

for developing and administering procedures and rules for such courses.

E. Any attorney employed by or under contract with the Oklahoma Indigent Defense System whose duties include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The Executive Director of the Oklahoma Indigent Defense System shall be responsible for developing and administering procedures and rules for such courses.

F. Any court-appointed attorney or retained attorney whose duties routinely include responsibility for a juvenile court docket shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce. The chief judge of the judicial district for which a court-appointed attorney serves shall be responsible for developing and administering procedures and rules for such courses.

G. Any court-appointed special advocate (CASA) available for appointment pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code shall complete education and training courses in juvenile law, child abuse and neglect and other issues relating to children such as foster care and parental divorce, including, but not limited to, risk factors which may identify domestic abuse and potential violence, safe visitation and supervised visitation arrangements and standards for a child and parties with particular emphasis on standards necessary if either party is an alcohol-dependent person or a drug-dependent person. The chief judge of the judicial district for which a court-appointed special advocate serves shall be responsible for developing and administering procedures and rules for such courses.

H. The training and education programs required by this section shall be developed and provided by or in cooperation with the Child Abuse Training and Coordinating Council.

I. For purposes of this section:

1. "Supervised visitation" means a program established pursuant to Section 5 of this act;

2. An "alcohol-dependent person" is a person who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence; and

4. "Domestic abuse" has the same meaning as such term defined in Section 60.1 of Title 22 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 112.2, as last amended by Section 25 of Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 112.2 A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child:

~~1. Evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the~~

~~child to have custody, guardianship or unsupervised visitation granted to the abusive person;~~

~~2. Evidence of child abuse as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act pursuant to this paragraph. If the parent requesting custody of a child has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or the child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the parent requesting custody and the requesting parent has not successfully completed the service and treatment plan required by the court, there shall be a rebuttable presumption that it is not in the best interests of the child for such parent to have sole custody, guardianship or unsupervised visitation; and~~

~~3. Whether whether any person seeking custody or who has custody of, guardianship of or visitation with a child:~~

~~a. is~~

~~1. Is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;;~~

~~b. is~~

~~2. Has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;~~

~~3. Has been convicted of a felony involving drug or alcohol abuse within the past five (5) years;~~

~~4. Has been convicted of domestic abuse within the past five (5) years;~~

~~5. Is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;;~~

~~c. is~~

6. Is residing with a person who has been ~~previously~~ convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, or guardianship ~~or unsupervised visitation~~ granted to a person who ~~is~~:

1. ~~Subject~~ Is subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

2. ~~Residing~~ Has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;

3. Has been convicted of a felony involving alcohol or drug use within the past five (5) years;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; ~~or~~

~~3. Residing~~ 6. Is residing with a person who has been ~~previously~~ convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person convicted of domestic abuse within the past five (5) years.

C. Custody of, guardianship of, or visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to an imminent risk of material harm.

D. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1a of Title 43, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Oklahoma Child Supervised Visitation Program".

B. It is the policy of this state to ensure that the health, safety, and welfare of the child is paramount when supervised visitation is ordered by the court.

C. For purposes of the Oklahoma Child Supervised Visitation Program:

1. "Supervised visitation" means the contact between a noncustodial parent who may be an alcohol-dependent person, a drug-dependent person or a person who has committed domestic abuse and one or more children of such parent in the presence of a third-party person who is responsible for observing and overseeing court-ordered visitation to provide for the safety of the child and any other parties during the visitation. The provisions of this paragraph shall not limit the authority of the court to require supervised visitation for other reasons when deemed necessary by the court to protect the child or other parties;

2. An "alcohol-dependent person" is a person who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug

dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence; and

4. "Domestic abuse" has the same meaning as such term defined in Section 60.1 of Title 22 of the Oklahoma Statutes.

D. 1. The associate district judge in each county within this state may select trained volunteers to provide supervised visitation pursuant to the Oklahoma Child Supervised Visitation Program.

2. By February 15, 2004, the associate judge of each county may appoint a judicial district supervised visitation team to:

- a. identify public and private entities which will be willing to provide location sites for purposes of the Oklahoma Child Supervised Visitation Program,
 - b. identify individuals who will be willing to serve as third-party persons to observe and oversee court-ordered supervised visitations,
 - c. establish training requirements for volunteers,
 - d. identify programs which may be available for the training of the volunteers including, but not limited to, the Department of Human Services, Office of the Attorney General, child advocacy centers, domestic violence groups, and the Department of Mental Health and Substance Abuse Services,
 - e. develop written protocol for handling supervised visitations so as to provide safety of the child and other parties during the supervised visitation,
 - f. develop application forms for volunteers applying for the Oklahoma Child Supervised Visitation Program.
- Information listed on the form shall include, but not be limited to:

- (1) name, address and phone number of the volunteer,

- (2) volunteer's place of employment and phone number,
 - (3) areas of expertise,
 - (4) listing of professional training in areas including, but not limited to, child abuse, domestic abuse, alcohol or drug abuse, mental illness or conflict management,
 - (5) consent form specifying release of information, and
 - (6) professional references, and
- g. identify which information of the parties and the child will be confidential and which may be available to others.

3. From recommendations of the team established pursuant to this subsection, the associate district judge in each county within this state may authorize one or more public or private agencies to provide location sites for the Oklahoma Child Supervised Visitation Program. A district judge may require either party requesting supervised visitation of a child to identify a trained third-party volunteer to observe and oversee the visitation. A district court shall not:

- a. require any state agency location or state employee to observe and oversee any supervised visitation, or
- b. appoint a third party to observe and oversee a supervised visitation who has not received the training as specified by the judicial district supervised visitation team.

4. A participating public or private agency location site may charge a fee for each visit.

E. The protocol for supervised visitation established by each judicial district supervised visitation team may require that:

1. The location site require each participant who has court-ordered supervised visitation for a child and who is participating

in the supervised visitation program to sign a time log upon arrival and departure. The agency location site must have an employee assigned to verify identification of each participant, initial each signature, and record the time of each person's arrival and departure; and

2. The agency location site also contain information on each client case including, but not limited to:

- a. a copy of the court order requiring supervised visitation, and
- b. name of individuals authorized to pick up or deliver a child to the agency location site for supervised visitation.

F. Each judicial district supervised visitation team may include, but not be limited to:

1. Mental health professionals;
2. Police officers or other law enforcement agents;
3. Medical personnel;
4. Child protective services workers;
5. Child advocacy individuals; and
6. The district attorney or designee.

G. An associate district judge of a county, the judicial district supervised visitation team created pursuant to this section and the Office of the Court Administrator may develop an informational brochure outlining the provisions of the Oklahoma Child Supervised Visitation Program and procedures to be used by volunteers in that judicial district. The brochure may be distributed through the municipal and district court, social service agency centers, county health departments, hospitals, crisis or counseling centers, and community action agencies.

H. Except for acts of dishonesty or gross negligence, no member of the judicial district supervised visitation team or volunteer shall be charged personally with any liability whatsoever by reason

of any act or omission committed or suffered in the performance of the duties pursuant to the provisions of this section.

I. The provisions of this section shall not apply to cases subject to the Oklahoma Children's Code and the Oklahoma Juvenile Code.

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. The child may be considered for continued assistance after reaching the age of nineteen (19) years if the child has applied for Supplemental Security Income and the initial application is pending or has been denied and the child's needs meet the criteria for an adoption

assistance difficulty of care level at Rate IV or higher as determined by the Department.

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. Section 5 of this act shall become effective December 15, 2003.

SECTION 8. 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.

49-1-7117 KSM 05/29/03