

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1064

By: Gilbert

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 21.1, as amended by Section 1, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 21.1), which relates to custody or guardianship of children; requiring courts to make certain determinations; adding circumstances that shall constitute a rebuttable presumption; amending 10 O.S. 2001, Section 7102, as amended by Section 1, Chapter 487, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7102), which relates to the Oklahoma Child Abuse Reporting and Prevention Act; modifying and adding definitions; amending 21 O.S. 2001, Section 852.1, which relates to child endangerment; increasing certain fine; amending 43 O.S. 2001, Section 112.2, as amended by Section 19, Chapter 445, O.S.L. 2002 (43 O.S. Supp. 2002, Section 112.2), which relates to evidence of ongoing domestic abuse; expanding consideration of court in certain situations; providing for certain evidence; 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; repealing 10 O.S. 2001, Section 21.1, as amended by Section 1, Chapter 413, O.S.L. 2002 (10 O.S. Supp. 2002, Section 21.1) and 43 O.S. 2001, Section 112.2, as amended by Section 3, Chapter 413, O.S.L. 2002 (43 O.S. Supp. 2002, Section 112.2), which are duplicate sections; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as amended by Section 1, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 21.1), is amended to read as follows:

Section 21.1 A. 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 to subsection E of this section, when a parent having physical custody and providing support to a child becomes deceased or when the custody is judicially removed from ~~such a~~ custodial parent, 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 parent has not successfully completed any required service or treatment plan required by the court; ~~or~~

6. The noncustodial parent has been convicted of child endangerment pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act or any similar act in any other state;
or

7. 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 consider the preference of the child in awarding custody of the child, if the child is of sufficient age to form an intelligent preference.

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 of 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, ~~or~~
- b. 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,
- c. has been convicted of committing domestic abuse within the last three (3) years,
- d. is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes,
- e. is a person who has been convicted of a felony involving drug abuse within the past three (3) years,
or
- f. is residing with a person who has been convicted of child endangerment pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act or any similar act in any other state.

2. 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 a person who:

- 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, ~~or~~

- b. 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,
- c. is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes,
- d. has been convicted of a felony involving drug abuse within the past three (3) years,
- e. is residing with a person who has been convicted of child endangerment pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act or any similar act in any other state,
- f. has been convicted of committing domestic abuse within the last three (3) years,
- g. is a drug-dependent person, or
- h. is committing ongoing domestic abuse.

3. For purposes of this subsection:

- a. "drug-dependent person" means a person:
 - (1) 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
 - (2) whose conduct would threaten the health, safety or welfare of the child or another, and

(b) "domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7102, as amended by Section 1, Chapter 487, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7102), is amended to read as follows:

Section 7102. A. 1. It is the policy of this state to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health, safety or welfare of such children.

2. It is the policy of this state that in responding to a report of child abuse or neglect:

- a. in any necessary removal of a child from the home,
- b. in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, and
- c. in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act,

that the best interests of the child shall be of paramount consideration.

B. Except as otherwise provided by and used in the Oklahoma Child Abuse Reporting and Prevention Act:

1. "Abuse" means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation;

2. ~~"Harm or threatened harm to a child's health or safety" includes, but is not limited to:~~

- ~~a. nonaccidental physical or mental injury,~~

- ~~b. sexual abuse,~~
- ~~c. sexual exploitation,~~
- ~~d. neglect,~~
- ~~e. failure or omission to provide protection from harm or threatened harm, or~~
- f. abandonment

"Assessment" means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat to the child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:

- a. an evaluation of the child's safety, and
- b. a determination regarding the family's need for services;

3. ~~"Neglect" means failure or omission to provide:~~

- ~~a. adequate food, clothing, shelter, medical care, and supervision,~~
- ~~b. special care made necessary by the physical or mental condition of the child, or~~
- ~~c. abandonment~~

"Child advocacy center" means an entity that is a full member in good standing with the National Children's Alliance. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:

- a. nonurban centers in districts with child populations that are less than sixty thousand (60,000),
- b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and
- c. urban centers in Oklahoma and Tulsa Counties;

4. "Child" means any person under the age of eighteen (18) years, except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

5. ~~"Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; a custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title~~ "Child endangerment" means knowingly permitting physical or sexual abuse of a child or knowingly permitting a child to be present at a location where controlled dangerous substances are being manufactured or attempted to be manufactured;

6. ~~"Sexual abuse" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare~~ "Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification;

7. ~~"Sexual exploitation" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's~~

~~health, safety or welfare~~ "Commission" means the Commission for Human Services;

8. ~~"Multidisciplinary child abuse team" means any team established pursuant to the provisions of Section 7110 of this title~~
"Confirmed report - court intervention" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened;

9. ~~"Child advocacy center" means an entity that is a full member in good standing with the National Children's Alliance. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:~~

- ~~a. nonurban centers in districts with child populations that are less than sixty thousand (60,000),~~
- ~~b. mid-level nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and~~
- ~~c. urban centers in Oklahoma and Tulsa Counties~~

"Confirmed report - services recommended" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required;

10. ~~"Assessment" means a systematic process utilized by the Department of Human Services to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, do not constitute a serious and immediate threat~~

~~to the child's health, safety or welfare. The assessment includes, but is not limited to, the following elements:~~

- ~~a. an evaluation of the child's safety, and~~
- ~~b. a determination regarding the family's need for services~~

"Department" means the Department of Human Services;

11. "Harm or threatened harm to a child's health or safety"

includes, but is not limited to:

- a. nonaccidental physical or mental injury,
- b. sexual abuse,
- c. sexual exploitation,
- d. neglect,
- e. failure or omission to provide protection from harm or threatened harm,
- f. abandonment, or
- g. child endangerment;

12. "Investigation" means an approach utilized by the

Department to respond to reports of alleged child abuse or neglect

which, according to priority guidelines established by the

Department, constitute a serious and immediate threat to the child's

health or safety. An investigation includes, but is not limited to,

the following elements:

- a. an evaluation of the child's safety or welfare,
- b. a determination whether or not child abuse or neglect occurred, and
- c. a determination regarding the family's need for prevention and intervention-related services;

~~12. "Services not needed determination" means a report in which a child protective services worker, after an investigation, determines that there is no identified risk of abuse or neglect;~~

~~13. "Services recommended determination" means a report in which a child protective services worker, after an investigation,~~

~~determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services~~ "Multidisciplinary child abuse team" means any team established pursuant to the provisions of Section 7110 of this title;

14. ~~"Confirmed report — services recommended" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required~~ "Neglect" means failure or omission to provide:

- a. adequate food, clothing, shelter, medical care, and supervision,
- b. special care made necessary by the physical or mental condition of the child, or
- c. abandonment;

15. ~~"Confirmed report — court intervention" means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened~~

"Person responsible for a child's health, safety or welfare" includes a parent; a legal guardian; a custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section

175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

16. ~~"Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification~~ "Prevention and intervention-related services" means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect;

17. ~~"Department" means the Department of Human Services~~ "Services not needed determination" means a report in which a child protective services worker, after an investigation, determines that there is no identified risk of abuse or neglect;

18. ~~"Commission" means the Commission for Human Services~~ "Services recommended determination" means a report in which a child protective services worker, after an investigation, determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services; and

19. ~~"Prevention and intervention-related services" means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect~~ "Sexual abuse" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare; and

20. "Sexual exploitation" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting,

encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by law, by a person responsible for the child's health, safety or welfare.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 852.1, is amended to read as follows:

Section 852.1 A. A 1. Any person who is not the parent, guardian, or person having custody or control over a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes, commits child endangerment when:

a. the person knowingly permits physical or sexual abuse of a child, or ~~who~~

b. knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Section 2-101 of Title 63 of the Oklahoma Statutes. ~~However, it~~

2. It is an affirmative defense to this ~~paragraph~~ subsection if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title or Section 7006-1.1 of Title 10 of the Oklahoma Statutes.

C. Any person convicted of violating any provision of this section shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the

imposition of a fine of not more than ~~Five Thousand Dollars~~
~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), or by both such fine
and imprisonment.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 112.2, as
amended by Section 19, Chapter 445, O.S.L. 2002 (43 O.S. Supp. 2002,
Section 112.2), 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 and evidence that either
party is drug-dependent, 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~~ the court;

2. Evidence of child abuse as ~~such~~ the 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 any person having custody of or seeking 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, ~~or~~
- b. 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 residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes,
- d. has been convicted of a felony involving drug abuse within the past three (3) years, or
- e. has been convicted of committing domestic abuse within the last three (3) years.

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

1. ~~Subject~~ Has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or any similar act in any other state or whose child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the person who has not successfully completed the service and treatment plan required by the court;

2. 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; ~~or~~

~~2. Residing~~ 3. 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;

4. Is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes;

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

6. Has been convicted of committing domestic abuse within the last three (3) years;

7. Is committing ongoing domestic abuse; or

8. Is a drug-dependent person.

C. For purposes of this section:

1. A "drug-dependent person" means a person:

a. 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

b. whose conduct would threaten the health, safety or welfare of the child or another; and

2. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship.

SECTION 5. REPEALER 10 O.S. 2001, Section 21.1, as amended by Section 1, Chapter 413, O.S.L. 2002 (10 O.S. Supp. 2002,

Section 21.1) and 43 O.S. 2001, Section 112.2, as amended by Section 3, Chapter 413, O.S.L. 2002 (43 O.S. Supp. 2002, Section 112.2), are hereby repealed.

SECTION 6. 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.

49-1-6402 MD 02/18/03