

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1734

By: Wells

AS INTRODUCED

An Act relating to children; creating the Bryar Wheeler Act; 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 1211, which relates to training requirements for certain judicial personnel and court-appointed special advocates; 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 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; providing for the ordering of supervised visitation of a child in certain situation for certain persons; prohibiting visitation in certain instances; providing certain information to be contained in court record; defining certain terms; creating the Oklahoma Child Supervised Visitation Program; setting public policy; defining term; authorizing certain actions by certain judges; requiring appointment of certain district supervised visitation teams; prohibiting certain actions; providing duties; providing for certain program volunteers; specifying 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; requiring distribution of forms; requiring certain action under certain circumstances; providing for liability; providing for membership; 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; 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 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 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 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, or
- 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.

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. 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. a person who is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes, or

d. a person who has been convicted of a felony involving drug or alcohol abuse within the past five (5) years.

3. a. There shall be a rebuttable presumption that it is not in the best interests of a child for a party to have custody of, guardianship of, or unsupervised visitation with the child if there is sufficient evidence that the person:

(1) is an alcohol-dependent person,

(2) is a drug-dependent person, or

(3) has a substantial mental illness.

b. Custody of, guardianship of, or visitation with a child shall not be granted to any person, if there is sufficient evidence that the person:

(1) is an alcohol-dependent person whose conduct would threaten the health, safety or welfare of the child or another,

(2) is a drug-dependent person whose conduct would threaten the health, safety or welfare of the child or another, or

(3) is a person who has a substantial mental illness whose conduct would threaten the health, safety or welfare of the child or another.

c. For purposes of this paragraph:

- (1) "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,
- (2) "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,
- (3) "substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior,
- (4) "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, and

(5) "supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child and other parties to the visitation.

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, a drug-dependent person or a person having a substantial mental illness.

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, a drug-dependent person or a person having a substantial mental illness. 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 the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child and other parties to the visitation;

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;

4. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior; and

5. "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 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 an alcohol-dependent person, a drug-dependent person or a person having a substantial mental illness, 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 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, or
- d. has been convicted of a felony involving alcohol or drug abuse within the past five (5) years.

B. 1. There shall be a rebuttable presumption that it is not in the best interests of the child for a party to have custody of, guardianship of or unsupervised visitation with the child if there is sufficient evidence that the party:

- a. is an alcohol-dependent person,
- b. is a drug-dependent person, or
- c. is a person who has a substantial mental illness.

2. If supervised visitation is not ordered pursuant to this subsection, the court shall document in the court record the reason as to why this determination was made.

C. Custody of, guardianship of, or visitation with a child shall not be granted to any person, if there is sufficient evidence that the person:

1. Is an alcohol-dependent person whose conduct would threaten the health, safety or welfare of the child or another;

2. Is a drug-dependent person whose conduct would threaten the health, safety or welfare of the child or another; or

3. Is a person who has a substantial mental illness whose conduct would threaten the health, safety or welfare of the child or another.

D. 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 is:

1. ~~Subject~~ 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 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 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; or

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

E. For purposes of this section:

1. 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;

2. 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;

3. "Substantial mental illness" means a substantial disorder of the adult's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior;

4. "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; and

5. "Supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person responsible for observing and seeking to ensure the safety of the child and other parties to the visitation.

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, "supervised visitation" means the contact between a noncustodial parent and one or more children in the presence of a third-party person who will observe and oversee court-ordered supervised visitation to provide for the safety of the child and other parties during the visitation.

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

2. Within sixty (60) days of the effective date of this act, the associate judge of each county shall 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 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 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 not to exceed Twenty Dollars (\$20.00) per visitation.

E. The protocol for supervised visitation established by each judicial district supervised visitation team shall at a minimum 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 shall 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 shall 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.

SECTION 6. 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 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.

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