ENGROSSED HOUSE
BILL NO. 2430

By: Kern, Nance, Thompson and Shelton of the House

and

Lawler of the Senate

An Act relating to children; amending 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), which relates to custody; specifying standard for obtaining custody; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), is amended to read as follows:

Section 21.1 A. 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 <u>except as otherwise provided in this section</u>;

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<u>,</u> but not limited to<u>,</u> 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. In addition to subsection ~~D~~ <u>E</u> of this section, when a parent having custody of a child ~~becomes deceased~~ <u>dies</u> or when custody of a

child is judicially removed from 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 of the child:

(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~~ the financial ability of the parent to contribute to the ~~child's~~ support of the child if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto.

Incidental or token financial contributions, visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child, 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 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 and the noncustodial parent has not successfully completed 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. It is presumed to be in the best interest of a child, unless disqualified pursuant to subsection E of this section, for a relative, as defined in Section 7001-1.3 of this title, of the child to receive custody of the child if:

1. The child is abandoned and left in the physical custody of the relative by a parent or the parents of the child with no physical contact between the parents and the child for one (1) year or more, excluding parents on active duty in the military; or

2. The custodial parent or parents, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding any petition for custody of the child, have willfully failed, refused, or neglected to contribute to the support of the child:

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

b. according to the financial ability of the parent to contribute to the support of the child if no provision for support is provided in an order.

Incidental or token financial contributions, visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child.

D. The court shall consider the preference of the child in awarding custody of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes.

~~D.~~ 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. is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,

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,

f. is residing with 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, 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 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. an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,

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,

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 a foreseeable risk of material harm.

~~E.~~ F. 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.

~~F.~~ G. For purposes of this section:

1. "Alcohol-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;

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

3. "Drug-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and

4. "Supervised visitation" means a program established pursuant to Section ~~5~~ 110.1a of ~~this act~~ Title 43 of the Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 2006.

Passed the House of Representatives the 6th day of March, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate