ENGROSSED SENATE
BILL NO. 733

By: Lawler of the Senate

and

Terrill of the House

An Act relating to children; amending 10 O.S. 2001, Section 7003-2.4, which relates to emergency custody; providing for notice and opportunity to be heard to a grandparent under certain conditions; expanding duties of the court related to an emergency custody hearing; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-2.4, is amended to read as follows:

Section 7003-2.4 A. 1. The peace officer or an employee of the court shall provide the parent, legal guardian, or custodian of a child immediate written notice of the protective or emergency custody of the child whenever possible.

2. The written notice shall:

a. inform the parents, legal guardian, or custodian that the child has been removed from the home,

b. inform the parent, legal guardian, or custodian of the child that an emergency custody hearing to determine custody of the child will occur within two (2) judicial days from the date the child was removed from the home, and

c. contain information about the:

(1) emergency custody hearing process~~,~~ including, but not limited to, the date, time and place that the child was taken into protective or emergency custody,

(2) nature of the allegation that led to placement of the child into protective or emergency custody,

(3) address and telephone number of the local and county law enforcement agencies,

(4) phone number of the local child welfare office of the Department of Human Services, and

(5) right of the parent, legal guardian or custodian to contact an attorney.

3. The written notice shall also contain the following or substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."

B. 1. Within the next two (2) judicial days following the child being taken into protective or emergency custody, the court shall conduct an emergency custody hearing to determine whether evidence or facts exist that are sufficient to demonstrate to the court there is reason to believe the child is in need of protection due to abuse or neglect, or is in surroundings that are such as to endanger the health, safety or welfare of the child.

2. At the emergency custody hearing, the court shall advise the parent, legal guardian or custodian of the child in writing of the procedure which will be followed with regard to determining custody of the child, including, but not limited to:

a. any right of the parent or legal guardian or custodian to testify and present evidence at court hearings,

b. the right to be represented by an attorney at court hearings as authorized by law,

c. the consequences of failure to attend any hearings which may be held, and

d. the right to appeal and the procedure for appealing the finding of a court on custody issues as authorized by law.

3. a. At the emergency custody hearing, the court shall:

(1) release the child to the child's parent, legal guardian or custodian or other responsible adult without conditions or under such conditions as the court finds reasonably necessary to ensure the health, safety or welfare of the child, or

(2) continue the child in or place the child into emergency custody if continuation of the child in the child’s home is contrary to the health, safety or welfare of the child, ~~and~~

(3) obtain information from the parent, legal guardian or custodian necessary to identify and locate kinship placement resources. <u>If such information indicates that within one (1) year of the emergency custody hearing the child had resided with a grandparent for six (6) months, and that such grandparent was the primary caregiver and provided primary financial support for the child during such time, the court shall provide notice and an opportunity to be heard at future hearings to such grandparent, and</u>

<u>(4) require the Department to provide to any custodian or other person caring for the child information on Department of Human Services programs and services available to the child.</u>

b. If a child has been removed from the custodial parent of the child and the court, in the best interests of the child, is unable to release the child to the custodial parent, the court shall give priority for

placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests. If the court cannot place the child with the noncustodial parent, custody shall be consistent with the provisions of Section 21.1 of this title. If custody of the child cannot be made pursuant to the provisions of Section 21.1 of this title, the reason for such determination shall be documented in the court record.

C. 1. Except as otherwise provided by this subsection, a petition for a deprived child proceeding shall be filed and a summons issued within five (5) judicial days from the date of assumption of custody; provided, however, such time period may be extended a period of time not to exceed fifteen (15) calendar days from the date of assumption of custody of the child if, upon request of the district attorney at the emergency custody hearing, the court determines there are compelling reasons to grant additional time for the filing of the petition for a deprived child proceeding.

2. If the petition is not filed as required by this subsection, then the emergency custody order shall expire. The district attorney shall submit for filing in the court record a written record specifying the reasons why the petition was not filed and specifying to whom the child was released.

D. If a petition is filed within the time period specified in subsection C of this section, the emergency custody order shall remain in force and effect for not longer than sixty (60) days, except as otherwise provided by this subsection.

The emergency custody order shall not be extended beyond sixty (60) days absent a showing that such further extension is necessary to ensure the health, safety or welfare of the child and is in the best interests of the child.

E. 1. The court may hold additional hearings at such intervals as may be determined necessary by the court to provide for the health, safety or welfare of the child.

2. The parent, legal guardian or custodian of the child, the child's attorney, the district attorney and guardian ad litem if appointed shall be given prior adequate notice of the date, time, place and purpose of any hearing by the court.

F. In scheduling hearings, the court shall give priority to proceedings in which a child is in emergency custody.

G. 1. No order of the court providing for the removal of a child alleged to be deprived from the home of such child shall not be entered unless the court makes a determination:

a. that continuation of the child in the child's home is contrary to the health, safety or welfare of the child, and

b. as to whether or not reasonable efforts were made to prevent the need for the removal of the child from the child's home, or

c. as to whether or not an absence of efforts to prevent the removal of the child from the child's home is reasonable because the removal is due to an alleged emergency and is for the purpose of providing for the health, safety or welfare of the child, or

d. reasonable efforts to provide for the return of the child to the child's home are not required pursuant to Section 7003-4.6 of this title; provided, however, upon such determination, the court shall inform the parent that a permanency hearing will be held within thirty (30) days from the determination.

2. In all proceedings or actions pursuant to this subsection, the child's health, safety or welfare shall be the paramount concern.

SECTION 2. This act shall become effective July 1, 2005.

SECTION 3. 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.

Passed the Senate the 8th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives