

CS for SB 733

1 THE STATE SENATE
2 Thursday, February 24, 2005

3 Committee Substitute for
4 Senate Bill No. 733

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 733 - By: LAWLER of the
6 Senate and TERRILL of the House.

7 An Act relating to children; amending 10 O.S. 2001, Section
8 7003-2.4, which relates to emergency custody; providing for
9 notice and opportunity to be heard to a grandparent under
10 certain conditions; expanding duties of the court related to
11 an emergency custody hearing; providing an effective date;
12 and declaring an emergency.

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

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

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

20 2. The written notice shall:

- 21 a. inform the parents, legal guardian, or custodian that
- 22 the child has been removed from the home,
- 23 b. inform the parent, legal guardian, or custodian of the
- 24 child that an emergency custody hearing to determine
- 25 custody of the child will occur within two (2)

1 judicial days from the date the child was removed from
2 the home, and

3 c. contain information about the:

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

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

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

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

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

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

22 B. 1. Within the next two (2) judicial days following the
23 child being taken into protective or emergency custody, the court

1 shall conduct an emergency custody hearing to determine whether
2 evidence or facts exist that are sufficient to demonstrate to the
3 court there is reason to believe the child is in need of protection
4 due to abuse or neglect, or is in surroundings that are such as to
5 endanger the health, safety or welfare of the child.

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

- 10 a. any right of the parent or legal guardian or custodian
- 11 to testify and present evidence at court hearings,
- 12 b. the right to be represented by an attorney at court
- 13 hearings as authorized by law,
- 14 c. the consequences of failure to attend any hearings
- 15 which may be held, and
- 16 d. the right to appeal and the procedure for appealing
- 17 the finding of a court on custody issues as authorized
- 18 by law.

- 19 3. a. At the emergency custody hearing, the court shall:
- 20 (1) release the child to the child's parent, legal
- 21 guardian or custodian or other responsible adult
- 22 without conditions or under such conditions as

- 1 the court finds reasonably necessary to ensure
2 the health, safety or welfare of the child, or
3 (2) continue the child in or place the child into
4 emergency custody if continuation of the child in
5 the child's home is contrary to the health,
6 safety or welfare of the child, and
7 (3) obtain information from the parent, legal
8 guardian or custodian necessary to identify and
9 locate kinship placement resources. If such
10 information indicates that within one (1) year of
11 the emergency custody hearing the child had
12 resided with a grandparent for six (6) months,
13 and that such grandparent was the primary
14 caregiver and provided primary financial support
15 for the child during such time, the court shall
16 provide notice and an opportunity to be heard at
17 future hearings to such grandparent, and
18 (4) require the Department to provide to any
19 custodian or other person caring for the child
20 information on Department of Human Services
21 programs and services available to the child.

- 22 b. If a child has been removed from the custodial parent
23 of the child and the court, in the best interests of

1 the child, is unable to release the child to the
2 custodial parent, the court shall give priority for
3 placement of the child with the noncustodial parent of
4 the child unless such placement would not be in the
5 child's best interests. If the court cannot place the
6 child with the noncustodial parent, custody shall be
7 consistent with the provisions of Section 21.1 of this
8 title. If custody of the child cannot be made
9 pursuant to the provisions of Section 21.1 of this
10 title, the reason for such determination shall be
11 documented in the court record.

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

21 2. If the petition is not filed as required by this subsection,
22 then the emergency custody order shall expire. The district
23 attorney shall submit for filing in the court record a written

1 record specifying the reasons why the petition was not filed and
2 specifying to whom the child was released.

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

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

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

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

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

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

- 1 a. that continuation of the child in the child's home is
2 contrary to the health, safety or welfare of the
3 child, and
4 b. as to whether or not reasonable efforts were made to
5 prevent the need for the removal of the child from the
6 child's home, or
7 c. as to whether or not an absence of efforts to prevent
8 the removal of the child from the child's home is
9 reasonable because the removal is due to an alleged
10 emergency and is for the purpose of providing for the
11 health, safety or welfare of the child, or
12 d. reasonable efforts to provide for the return of the
13 child to the child's home are not required pursuant to
14 Section 7003-4.6 of this title; provided, however,
15 upon such determination, the court shall inform the
16 parent that a permanency hearing will be held within
17 thirty (30) days from the determination.

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

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

22 SECTION 3. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
4 PASS, As Amended and Coauthored.