

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1436

By: Kerr

AS INTRODUCED

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 of children; providing mandatory preference language in awarding custody or appointing guardianship; stating legislative intent; directing the Department of Human Services to promulgate certain rules; providing for codification; 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~~ shall 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;
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. In addition to subsection D of this section, when a parent having custody of a child becomes deceased 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:

(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 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. 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. 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. 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. 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. NEW LAW A new section of law to be  
codified in the Oklahoma Statutes as Section 7106.1 of Title 10,  
unless there is created a duplication in numbering, reads as  
follows:

A. It is the intent to of the Legislature that a child be  
removed from an environment in which illegal drugs are involved.

B. The Department of Human Services shall promulgate rules that address the finding of abuse or neglect when a child is exposed to the presence and/or use of illegal drugs.

SECTION 3. This act shall become effective November 1, 2006.

50-2-2243

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