STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 780 By: Leftwich

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 20, which relates to incarceration of single custodial parents; requiring certain written findings; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 20, is amended to read as follows:

Section 20. A. When any person is convicted of an offense against the laws of this state and is sentenced to imprisonment to be served in a county jail or a state correctional institution, the judge of the district court shall inquire whether such person is a single custodial parent of any minor child. If such person is a single custodial parent, the judge shall inquire into the arrangements that have been made for the care and custody of the child during the period of incarceration of the custodial parent. ~~If~~ The judge shall submit written findings related to the custodial arrangements of the child, and if the judge finds that such arrangements are not appropriate or in the best interests of the child, the court shall order, based upon such written findings, the parent to execute the necessary powers of attorney, guardianship, or other appropriate legal documents or legal proceeding to place the child in order to ensure adequate and appropriate care and custody of the child during the absence of the parent. The parent may place the child with:

1. The other parent of the child involved, if such parent's rights have not been terminated. If the custodial parent has

custody of the child pursuant to an order of a court in a divorce proceeding, the court having jurisdiction over the divorce proceeding shall determine whether a modification of the custody order placing the child in the custody of the other parent is appropriate and in the best interests of the child. The court shall notify the sentencing judge whether the custody order has been modified to place custody with the other parent. If the custody order is not modified, the judge shall order the parent to make other appropriate arrangements for the child;

2. A relative within the fourth degree when the judge determines such placement to be suitable for the child;

3. The Department of Human Services in accordance with the rules of the Department for the voluntary placement of children, or a child welfare agency duly licensed or recognized pursuant to the Oklahoma Child Care Facilities Licensing Act; or

4. Some other individual with the written assent of the court.

B. When the custody of the child is placed with the other parent pursuant to a modification of a custody order by the court having jurisdiction over the divorce proceeding, the provisions of subsection C of this section shall not apply. Provided, upon the recommendation of such court, the sentencing judge may require the parent to whom custody is transferred to comply with the provisions of subsections D and E of this section.

C. 1. Except as provided by subsection B of this section, when the parent proposes to place the child with an individual specified by paragraph 1, 2 or 4 of subsection A of this section, the court shall require a placement investigation and report be made to the court. The person making the investigation and report to the court shall be a person qualified by training or experience as designated by the court; provided, the court shall give preference to designating an appropriately licensed or certified individual or agency to complete the investigation. The placement investigation

shall include inquiry to determine whether the proposed home is a suitable one for the child and any other circumstances and conditions which may have a bearing on the health, safety and welfare of the child. The report shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed placement and the reason therefor.

2. If suitable placement is not found pursuant to the provisions of this subsection, or the single custodial parent refuses or is unwilling to make appropriate arrangements for such child to the satisfaction of the court, the court shall order the district attorney to determine whether a petition alleging the child to be a deprived child is warranted and, if warranted by the facts in the case, to file such petition. When such petition is filed, the court may issue temporary orders for the care and custody of the child as otherwise provided by Title 10 of the Oklahoma Statutes. If the child is found by the court to be a deprived child, the provisions of Title 10 of the Oklahoma Statutes related to deprived children shall apply.

D. Except when the child is found by a court to be a deprived child or as otherwise provided by subsection B of this section, when the child is placed as provided by this section or the period of incarceration of the custodial parent is less than six (6) months, the judge shall transfer matters related to the placement of the child to the judge of the district court having juvenile docket responsibilities and review the placement and circumstances of the child at least once every six (6) months until such time as the child is returned to the parent or the child reaches eighteen (18) years of age.

1. The person or agency with whom the child has been placed shall submit a report to the judge prior to each review at such time and in such manner as ordered by the judge.

2. The report shall include but not be limited to a summary of the physical, mental, and emotional condition of the child, the conditions existing in the home or facility where the child has been placed and the adjustment of the child to said home or facility, the child's attendance and progress in school, and any contact or involvement of the child with the courts or law enforcement other than the supervision of the placement of the child by the sentencing judge.

3. When a change in the placement of the child is desired or proposed by the person or agency with whom the child has been placed, the sentencing judge shall be notified and the placement of the child shall not be changed except with the approval of said judge. The judge shall approve any subsequent placement of the child as otherwise provided by this section and the person or agency with whom the child is subsequently placed shall be subject to the provisions of this subsection.

E. Failure to file a report or to notify the judge of a desired or proposed change in the placement of the child shall be deemed to be contempt of court and is punishable as otherwise provided by law.

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

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