

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2187

6 By: Wesselhoft and Kern

7 COMMITTEE SUBSTITUTE

8 An Act relating to children; amending 10 O.S. 2001,
9 Section 21.1, as last amended by Section 2, Chapter
10 415, O.S.L. 2004 (10 O.S. Supp. 2006, Section 21.1),
11 which relates to custody or guardianship; expanding
12 custody proceedings; modifying procedure; modifying
13 factors in determining if parent is unfit parent;
14 providing for certain presumptions; prohibiting
15 modification in certain circumstances; amending 10
16 O.S. 2001, Section 22.1, which relates to grandparent
17 care of grandchildren; requiring distribution of
18 brochure for certain assistance program; repealing 10
19 O.S. 2001, Section 9, which relates to abuse of
20 parental authority; and providing an effective date.

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

22 SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as
23 last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp.
24 2006, Section 21.1), is amended to read as follows:

25 Section 21.1 A. ~~Except as otherwise provided by this section,~~
26 ~~custody should~~ Custody or guardianship may be awarded ~~or a guardian~~
27 ~~appointed~~ in the following order of preference according to the best
28 interests of the child to:

- 1 1. A parent or to both parents jointly;
- 2 2. A grandparent;
- 3 3. A person who was indicated by the wishes of a deceased
- 4 parent;
- 5 4. A relative of either parent;
- 6 5. The person in whose home the child has been living in a
- 7 wholesome and stable environment including but not limited to a
- 8 foster parent; or
- 9 6. Any other person deemed by the court to be suitable and able
- 10 to provide adequate and proper care and guidance for the child.

11 B. ~~In addition to subsection D of this section, when a parent~~
12 ~~having custody of a child becomes deceased or when~~ When applying
13 subsection A of this section, a court shall award custody or
14 guardianship of a child is judicially removed from the parent having
15 custody of the child, the court may only deny the noncustodial to a
16 parent eustody of the child or guardianship of the child if, unless
17 a nonparent proves by clear and convincing evidence that:

- 18 1. ~~a.~~ For a period of at least twelve (12) months out of the
- 19 last fourteen (14) months immediately preceding the
- 20 determination of the custody or guardianship action,
- 21 the ~~noncustodial~~ parent has willfully failed, refused,
- 22 or neglected to contribute to the ~~child's~~ support of
- 23 the child:

24

1 ~~(1)~~ a. in substantial compliance with a support provision or
2 an order entered by a court of competent jurisdiction
3 adjudicating the duty, amount, and manner of support,
4 or

5 ~~(2)~~ b. according to ~~such parent's~~ the financial ability of
6 the parent to contribute to the ~~child's~~ support of the
7 child if no provision for support is ~~provided in a~~
8 ~~decree of divorce~~ entered by a court of competent
9 jurisdiction, or an order of modification subsequent
10 ~~thereto, and~~

11 ~~b.~~ ~~The denial of custody or guardianship is in the best~~
12 ~~interest of the child.~~

13 For purposes of this paragraph, incidental or token financial
14 contributions shall not be considered in establishing whether a
15 parent has satisfied his or her obligation under subparagraphs a and
16 b of this paragraph;

17 2. a. The ~~noncustodial parent has abandoned the child as~~
18 ~~such term is defined by Section 7006 1.1 of this title~~
19 is left in the physical custody of a nonparent by a
20 parent or parents of the child for one (1) year or
21 more, excluding parents on active duty in the
22 military, and

23 b. The parent or parents have not maintained regular
24 visitation or communication with the child.

1 For purposes of this paragraph, incidental or token visits or
2 communications shall not be considered in determining whether a
3 parent or parents have regularly maintained visitation or
4 communication;

5 3. The parental rights of the ~~noncustodial~~ parent have been
6 terminated;

7 4. The ~~noncustodial~~ parent has been convicted of any crime
8 against public decency and morality pursuant to Title 21 of the
9 Oklahoma Statutes;

10 5. The child has been adjudicated deprived pursuant to the
11 Oklahoma Children's Code and the ~~noncustodial~~ parent has not
12 successfully completed a service or treatment plan if required by
13 the court; or

14 6. The court finds ~~it would be detrimental to the health or~~
15 ~~safety of the child for the noncustodial~~ that the parent to have
16 custody or be appointed guardian is affirmatively unfit. There
17 shall be a rebuttable presumption that a parent is affirmatively
18 unfit if the parent:

19 a. is or has been subject to the registration
20 requirements of the Oklahoma Sex Offenders
21 Registration Act or any similar act in any other
22 state,

23
24

- 1 b. has been convicted of a crime listed in the Oklahoma
2 Child Abuse Reporting and Prevention Act or in Section
3 582 of Title 57 of the Oklahoma Statutes,
- 4 c. is an alcohol-dependent person or a drug-dependent
5 person as established by clear and convincing evidence
6 and who can be expected in the near future to inflict
7 or attempt to inflict serious bodily harm to himself
8 or herself or another person as a result of the
9 dependency,
- 10 d. has been convicted of domestic abuse within the past
11 five (5) years,
- 12 e. is residing with a person who is or has been subject
13 to the registration requirements of the Oklahoma Sex
14 Offenders Registration Act or any similar act in any
15 other state,
- 16 f. is residing with a person who has been convicted of a
17 crime listed in the Oklahoma Child Abuse Reporting and
18 Prevention Act or in Section 582 of Title 57 of the
19 Oklahoma Statutes, or
- 20 g. is residing with a person who has been convicted of
21 domestic abuse within the past five (5) years.

22 ~~C. The court shall consider the preference of the child in~~
23 ~~awarding custody of the child pursuant to Section 113 of Title 43 of~~
24 ~~the Oklahoma Statutes~~ Except in cases of a temporary guardianship in

1 which the temporary guardian and the parent agree to modification, a
2 custody determination made in accordance with subsection B of this
3 section shall not be modified unless the person seeking the
4 modification proves that:

5 1. Since the making of the order sought to be modified, there
6 has been a permanent, material, and substantial change of conditions
7 that directly affects the best interests of the child; and

8 2. As a result of the change of circumstances the child would
9 be substantially better off with regard to the temporal, mental, and
10 moral welfare of the child if custody were modified.

11 ~~D. 1. In every case involving the custody of, guardianship of~~
12 ~~or visitation with a child, the court shall determine whether any~~
13 ~~individual seeking custody or who has custody of, guardianship of or~~
14 ~~visitation with a child:~~

15 ~~a. is or has been subject to the registration~~
16 ~~requirements of the Oklahoma Sex Offenders~~
17 ~~Registration Act or any similar act in any other~~
18 ~~state,~~

19 ~~b. has been convicted of a crime listed in the Oklahoma~~
20 ~~Child Abuse Reporting and Prevention Act or in Section~~
21 ~~582 of Title 57 of the Oklahoma Statutes,~~

22 ~~c. is an alcohol dependent person or a drug dependent~~
23 ~~person as established by clear and convincing evidence~~
24 ~~and who can be expected in the near future to inflict~~

1 ~~or attempt to inflict serious bodily harm to himself~~
2 ~~or herself or another person as a result of such~~
3 ~~dependency,~~

4 ~~d. has been convicted of domestic abuse within the past~~
5 ~~five (5) years,~~

6 ~~e. is residing with a person who is or has been subject~~
7 ~~to the registration requirements of the Oklahoma Sex~~
8 ~~Offenders Registration Act or any similar act in any~~
9 ~~other state,~~

10 ~~f. is residing with a person who has been convicted of a~~
11 ~~crime listed in the Oklahoma Child Abuse Reporting and~~
12 ~~Prevention Act or in Section 582 of Title 57 of the~~
13 ~~Oklahoma Statutes, or~~

14 ~~g. is residing with a person who has been convicted of~~
15 ~~domestic abuse within the past five (5) years.~~

16 ~~2. There shall be a rebuttable presumption that it is not in~~
17 ~~the best interests of the child to have custody, or guardianship~~
18 ~~granted to:~~

19 ~~a. a person who is or has been subject to the~~
20 ~~registration requirements of the Oklahoma Sex~~
21 ~~Offenders Registration Act or any similar act in any~~
22 ~~other state,~~

23 ~~b. a person who has been convicted of a crime listed in~~
24 ~~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~~

1 ~~custody, guardianship or visitation will likely expose the child to~~
2 ~~a foreseeable risk of material harm.~~

3 ~~E.~~ Except as otherwise provided by the Oklahoma Child
4 Supervised Visitation Program, court-ordered supervised visitation
5 shall be governed by the Oklahoma Child Supervised Visitation
6 Program.

7 ~~F.~~ E. For purposes of this section:

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

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

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

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

16 SECTION 2. AMENDATORY 10 O.S. 2001, Section 22.1, is
17 amended to read as follows:

18 Section 22.1 A. 1. The Oklahoma Legislature recognizes that:

19 a. children who have been abused, who are dependent or
20 neglected, or whose parents, for whatever reason, may
21 be unable or unwilling to provide care for their
22 children, are best served when they can be cared for
23 by grandparents or other suitable relatives instead of
24

1 placing those children in foster care with the State
2 of Oklahoma, and

- 3 b. while grandparents or other relatives are often
4 willing to provide for the care of children who can no
5 longer remain with their parents, there may exist
6 financial obstacles to the provision of such care, or
7 there may be a need for other services to enable the
8 children to remain with their grandparents or other
9 relatives in order to prevent those children's entry
10 into the foster care system.

11 2. It is the intent of the Oklahoma Legislature in enacting
12 this section to:

- 13 a. recognize family relationships in which a grandparent
14 or other relative within the third degree of
15 relationship to the child is the head of a household
16 that includes a child otherwise at risk of foster care
17 placement by the Department of Human Services,
18 b. enhance family preservation and stability by
19 recognizing that most children in placements with
20 grandparents and other relatives within the third
21 degree of relationship to the child do not need
22 intensive supervision of the placement by the courts
23 or by the Department of Human Services,
24

1 c. provide additional placement options and incentives
2 that will achieve permanency and stability for many
3 children who are otherwise at risk of foster care
4 placement by the Department of Human Services because
5 of abuse, abandonment, or neglect, but who may
6 successfully be able to reside in the care of
7 relatives within the third degree of relationship to
8 the child, and

9 d. reserve the limited casework and supervisory resources
10 of the Department of Human Services and the courts
11 expended to care for children in state custody for
12 those cases in which children do not have the option
13 for safe, stable care within their immediate family.

14 B. The Department of Human Services shall establish and operate
15 a relative support program pursuant to eligibility guidelines
16 established in this section and by rules of the Department
17 promulgated thereto which will divert children from the foster care
18 program operated by the Department of Human Services. The relative
19 support program shall provide assistance to relatives within the
20 third degree of relationship to a child who are caring for the child
21 on a full-time basis, regardless of whether there is a court order
22 granting custody of the child to the relative.

23 C. Grandparents or other ~~such~~ relatives who qualify for and
24 participate in the relative support program are not required to be

1 certified as foster parents or to meet the foster care requirements
2 but shall be capable of providing a physically safe environment and
3 a stable, supportive home for the children under their care.

4 D. Upon request by grandparents or other relatives who are
5 caring for a child on a full-time basis, the Department shall
6 complete a needs assessment on such grandparents or other relatives
7 to determine the appropriate services and support needed by the
8 child and the grandparents or other such relatives.

9 E. Within available funding specified by this section, the
10 relative support program may provide grandparents or other suitable
11 relatives with:

- 12 1. Case management services;
- 13 2. Monthly stipends or other financial assistance, family
14 support and preservation services;
- 15 3. Flexible funds to enable the grandparents or other relatives
16 to meet unusual or crisis expenditures, including but not limited
17 to, making housing deposits, utility deposits, or to purchase beds,
18 clothing and food;
- 19 4. Subsidized child care and after school care;
- 20 5. Respite care;
- 21 6. Transportation;
- 22 7. Counseling;
- 23 8. Support groups;
- 24 9. Assistance in accessing parental child support payments;

1 10. Aid in accessing food stamps, Social Security and other
2 public benefits;

3 11. Information about legal options for relative caregivers;

4 12. Assistance for establishing a relative guardianship or
5 relative custodianship for the child;

6 13. Available volunteer attorney services;

7 14. Mediation/family group conferencing; and

8 15. Community-based services and state or federal programs
9 available to the child and relatives to support the child's safety,
10 growth and health development.

11 F. Children living with grandparents or other relatives within
12 the third degree of relationship to the child who are receiving
13 assistance pursuant to this section shall be eligible for Medicaid
14 coverage.

15 G. Subject to availability of funding, and as may be permitted
16 by federal law or regulations governing the Department of Human
17 Services' block grant for Temporary Assistance for Needy Families
18 (TANF), the Department of Human Services is specifically authorized
19 to provide funding assistance from such block grant or other
20 available funds for the development and operation of the relative
21 support program by providing available funds which are not otherwise
22 committed to or necessary for the provision of the Statewide
23 Temporary Assistance Responsibility System. In addition, the
24 Department may use any other state, federal or private funds

1 available to the Department for such purposes to implement the
2 provisions of this section.

3 H. 1. In order to qualify for the receipt of any monthly
4 stipend, the grandparent or other relative shall meet any
5 eligibility criteria determined by the Department of Human Services.

6 2. Within limits of available funding, monthly stipends may be
7 paid to grandparents or other relatives with the third degree of
8 relationship to the child who have physical full-time custody of a
9 child who would be unable to serve in that capacity without a
10 monthly stipend because of inadequate financial resources, thus
11 exposing the child to the trauma of potential placement in a shelter
12 or in foster care placement by the Department of Human Services.
13 The statewide average monthly rate for children in the legal custody
14 of grandparents or other relatives who are not certified as foster
15 homes shall not exceed the cost of providing foster care.

16 I. Additional assistance may be made available to qualified
17 grandparents or other relatives within the third degree of
18 relationship and children, based upon specific needs of the
19 grandparent or other relative of the child and the specific needs of
20 the child. Such assistance shall also be subject to available
21 funding.

22 J. The relative support program established by the Department
23 pursuant to this section may receive referrals from district courts
24 of this state, from social service or child advocate agencies, from

1 any other agency of this state, or other states or federal programs.
2 In addition, the relative support program may be accessed directly
3 by the grandparents or other relatives of the affected children by
4 application made to the Department of Human Services.

5 K. The Department of Human Services may provide any services
6 necessary to effectuate the purposes of this section by contract
7 with any person or with any public or private entity.

8 L. The provisions of this section shall also be available to a
9 legal guardian of a child who is within the fifth degree of relation
10 to the child.

11 M. The Department of Human Services shall, pursuant to the
12 provisions of the Administrative Procedures Act, promulgate any
13 rules necessary to implement the provisions of this section.

14 N. As a part of the relative support program, the Department
15 shall develop, publish, and distribute an informational brochure for
16 grandparents and other relatives who provide full-time care for
17 children. The information provided under the program authorized by
18 this section may include, but is not limited to, the following:

- 19 1. The benefits available to children and grandparents or other
20 relatives pursuant to this section providing full-time care;
- 21 2. The procedures to access the relative support program;
- 22 3. A list of support groups and resources located throughout
23 the state;

24

1 4. Such other information deemed necessary by the Department;
2 and

3 5. The brochure ~~may~~ shall be distributed through municipal and
4 district courts, hospitals, public health nurses, child protective
5 services, medical professional offices, county health departments,
6 elementary and secondary schools, senior citizens centers, public
7 libraries, local, city, county and state offices and community
8 action agencies selected by the Department.

9 O. The Department of Human Services shall submit a report of
10 the outcomes associated with the relative support program
11 established pursuant to this section to the Speaker of the Oklahoma
12 House of Representatives and the President Pro Tempore of the State
13 Senate on or before January 15, 2002.

14 SECTION 3. REPEALER 10 O.S. 2001, Section 9, is hereby
15 repealed.

16 SECTION 4. This act shall become effective November 1, 2007.

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