

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 469

6 By: Easley of the Senate

7 and

8 Peters of the House

9 COMMITTEE SUBSTITUTE

10 An Act relating to children; amending 10 O.S. 2001,  
11 Section 21.1, as last amended by Section 2, Chapter  
12 415, O.S.L. 2004 (10 O.S. Supp. 2006, Section 21.1),  
13 which relates to custody; stating intent of  
14 Legislature; amending 10 O.S. 2001, Section 7505-4.2,  
15 which relates to consent for adoption; specifying  
16 classifications for support; and providing an  
17 effective date.

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

19 SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as  
20 last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp.  
21 2006, Section 21.1), is amended to read as follows:

22 Section 21.1 A. Except as otherwise provided by this section,  
23 custody should be awarded or a guardian appointed in the following  
24 order of preference according to the best interests of the child to:

1. A parent or to both parents jointly;

1           2. A grandparent;

2           3. A person who was indicated by the wishes of a deceased  
3 parent;

4           4. A relative of either parent;

5           5. The person in whose home the child has been living in a  
6 wholesome and stable environment including but not limited to a  
7 foster parent; or

8           6. Any other person deemed by the court to be suitable and able  
9 to provide adequate and proper care and guidance for the child.

10          B. It is the intent of the Legislature that every attempt be  
11 made to place a child with a member of the child's family.

12          C. In addition to subsection D E of this section, when a parent  
13 having custody of a child becomes deceased or when custody of a  
14 child is judicially removed from the parent having custody of the  
15 child, the court may only deny the noncustodial parent custody of  
16 the child or guardianship of the child if:

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

22                    (1) in substantial compliance with a support  
23                    provision or an order entered by a court of  
24

1                   competent jurisdiction adjudicating the duty,  
2                   amount, and manner of support, or

3                   (2) according to such parent's financial ability to  
4                   contribute to the child's support if no provision  
5                   for support is provided in a decree of divorce or  
6                   an order of modification subsequent thereto, and

7                   b. the denial of custody or guardianship is in the best  
8                   interest of the child;

9                   2. The noncustodial parent has abandoned the child as such term  
10                  is defined by Section 7006-1.1 of this title;

11                  3. The parental rights of the noncustodial parent have been  
12                  terminated;

13                  4. The noncustodial parent has been convicted of any crime  
14                  against public decency and morality pursuant to Title 21 of the  
15                  Oklahoma Statutes;

16                  5. The child has been adjudicated deprived pursuant to the  
17                  Oklahoma Children's Code and the noncustodial parent has not  
18                  successfully completed a service or treatment plan if required by  
19                  the court; or

20                  6. The court finds it would be detrimental to the health or  
21                  safety of the child for the noncustodial parent to have custody or  
22                  be appointed guardian.

1       ~~C.~~ D. The court shall consider the preference of the child in  
2 awarding custody of the child pursuant to Section 113 of Title 43 of  
3 the Oklahoma Statutes.

4       ~~D.~~ E. 1. In every case involving the custody of, guardianship  
5 of or visitation with a child, the court shall determine whether any  
6 individual seeking custody or who has custody of, guardianship of or  
7 visitation with a child:

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

1 Offenders Registration Act or any similar act in any  
2 other state,

3 f. is residing with a person who has been convicted of a  
4 crime listed in the Oklahoma Child Abuse Reporting and  
5 Prevention Act or in Section 582 of Title 57 of the  
6 Oklahoma Statutes, or

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

9 2. There shall be a rebuttable presumption that it is not in  
10 the best interests of the child to have custody, or guardianship  
11 granted to:

12 a. a person who is or has been subject to the  
13 registration requirements of the Oklahoma Sex  
14 Offenders Registration Act or any similar act in any  
15 other state,

16 b. a person who has been convicted of a crime listed in  
17 the Oklahoma Child Abuse Reporting and Prevention Act  
18 or in Section 582 of Title 57 of the Oklahoma  
19 Statutes,

20 c. an alcohol-dependent person or a drug-dependent person  
21 as established by clear and convincing evidence and  
22 who can be expected in the near future to inflict or  
23 attempt to inflict serious bodily harm to himself or  
24

1 herself or another person as a result of such  
2 dependency,

3 d. a person who has been convicted of domestic abuse  
4 within the past five (5) years,

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

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

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

16 3. Custody of, guardianship of, or any visitation with a child  
17 shall not be granted to any person if it is established that the  
18 custody, guardianship or visitation will likely expose the child to  
19 a foreseeable risk of material harm.

20 ~~E.~~ F. Except as otherwise provided by the Oklahoma Child  
21 Supervised Visitation Program, court-ordered supervised visitation  
22 shall be governed by the Oklahoma Child Supervised Visitation  
23 Program.

24 ~~F.~~ G. For purposes of this section:

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

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

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

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

9 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-4.2, is  
10 amended to read as follows:

11 Section 7505-4.2 A. Consent to adoption is not required from a  
12 putative father of a minor who, at the hearing provided for in  
13 Section 7505-2.1 or 7505-4.1 of this title, fails to prove he is the  
14 father of the child.

15 B. Consent to adoption is not required from a parent who, for a  
16 period of twelve (12) consecutive months out of the last fourteen  
17 (14) months immediately preceding the filing of a petition for  
18 adoption of a child or a petition to terminate parental rights  
19 pursuant to Section 7505-2.1 of this title, has willfully failed,  
20 refused, or neglected to contribute to the support of such minor:

21 1. In substantial compliance with an order entered by a court  
22 of competent jurisdiction adjudicating the duty, amount, and manner  
23 of support; or  
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1           2. According to such parent's financial ability to contribute  
2 to such minor's support if no provision for support is provided in  
3 an order. For the purposes of this section, support for the minor  
4 shall benefit the minor by providing a necessity. Payments that  
5 shall not be considered support shall include, but are not limited  
6 to:

- 7           a. genetic and drug testing,
- 8           b. supervised visitation,
- 9           c. counseling for any person other than the minor,
- 10          d. court fees and costs,
- 11          e. restitution payments, and
- 12          f. transportation costs for any person other than the  
13             minor, unless such transportation expenses are  
14             specifically ordered in lieu of support in a court  
15             order.

16           The incarceration of a parent in and of itself shall not prevent  
17 the adoption of a minor without consent.

18           C. Consent to adoption is not required from a father or  
19 putative father of a minor born out of wedlock if:

20           1. The minor is placed for adoption within ninety (90) days of  
21 birth, and the father or putative father fails to show he has  
22 exercised parental rights or duties towards the minor, including,  
23 but not limited to, failure to contribute to the support of the  
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1 mother of the child to the extent of his financial ability during  
2 her term of pregnancy; or

3 2. The minor is placed for adoption within fourteen (14) months  
4 of birth, and the father or putative father fails to show that he  
5 has exercised parental rights or duties towards the minor,  
6 including, but not limited to, failure to contribute to the support  
7 of the minor to the extent of his financial ability, which may  
8 include consideration of his failure to contribute to the support of  
9 the mother of the child to the extent of his financial ability  
10 during her term of pregnancy. Failure to contribute to the support  
11 of the mother during her term of pregnancy shall not in and of  
12 itself be grounds for finding the minor eligible for adoption  
13 without such father's consent.

14 The incarceration of a parent in and of itself shall not prevent  
15 the adoption of a minor without consent.

16 D. In any case where a father or putative father of a minor  
17 born out of wedlock claims that, prior to the receipt of notice of  
18 the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this  
19 title, he had been specifically denied knowledge of the minor or  
20 denied the opportunity to exercise parental rights and duties toward  
21 the minor, such father or putative father must prove to the  
22 satisfaction of the court that he made sufficient attempts to  
23 discover if he had fathered a minor or made sufficient attempts to

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1 exercise parental rights and duties toward the minor prior to the  
2 receipt of notice.

3 E. Consent to adoption is not required from a parent or  
4 putative father who waives in writing his right to notice of the  
5 hearing provided for in Section 7505-2.1 or 7505-4.1 of this title.

6 F. Consent to adoption is not required from a parent or  
7 putative father who fails to appear at the hearing provided for in  
8 Section 7505-2.1 or 7505-4.1 of this title if all notice  
9 requirements contained in or pursuant to such sections have been  
10 met.

11 G. Consent to adoption is not required from a parent who is  
12 entitled to custody of a minor and has abandoned the minor.

13 H. 1. Consent to adoption is not required from a parent who  
14 fails to establish and/or maintain a substantial and positive  
15 relationship with a minor for a period of twelve (12) consecutive  
16 months out of the last fourteen (14) months immediately preceding  
17 the filing of a petition for adoption of the child.

18 2. In any case where a parent of a minor claims that prior to  
19 the receipt of notice of the hearing provided for in Sections 7505-  
20 2.1 and 7505-4.1 of this title, such parent had been denied the  
21 opportunity to establish and/or maintain a substantial and positive  
22 relationship with the minor by the custodian of the minor, such  
23 parent shall prove to the satisfaction of the court that he or she  
24 has taken sufficient legal action to establish and/or maintain a

1 substantial and positive relationship with the minor prior to the  
2 receipt of such notice.

3 3. For purposes of this subsection, "fails to establish and/or  
4 maintain a substantial and positive relationship" means the parent:

5 a. has not maintained frequent and regular contact with  
6 the minor through frequent and regular visitation or  
7 frequent and regular communication to or with the  
8 minor, or

9 b. has not exercised parental rights and  
10 responsibilities.

11 I. Consent to adoption is not required from a parent who has  
12 been convicted in a criminal action pursuant to the provisions of  
13 Sections 7102 and 7115 of this title and Sections 1021.3, 1111 and  
14 1123 of Title 21 of the Oklahoma Statutes or who has either:

15 1. Physically or sexually abused the minor or a sibling of such  
16 minor or failed to protect the minor or a sibling of such minor from  
17 physical or sexual abuse that is heinous or shocking to the court or  
18 that the minor or sibling of such minor has suffered severe harm or  
19 injury as a result of such physical or sexual abuse; or

20 2. Physically or sexually abused the minor or a sibling of such  
21 minor or failed to protect the minor or a sibling of such minor from  
22 physical or sexual abuse subsequent to a previous finding that such  
23 parent has physically or sexually abused the minor or a sibling of  
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1 such minor or failed to protect the minor or a sibling of such minor  
2 from physical or sexual abuse.

3 J. Consent to adoption is not required from a parent who has  
4 been convicted in a criminal action of having caused the death of a  
5 sibling of the minor as a result of the physical or sexual abuse or  
6 chronic neglect of such sibling.

7 K. Consent to adoption is not required from a parent if the  
8 parent has been sentenced to a period of incarceration of not less  
9 than ten (10) years and the continuation of parental rights would  
10 result in harm to the minor based on consideration of the following  
11 factors, among others: the duration of incarceration and its  
12 detrimental effect on the parent/child relationship; any previous  
13 incarcerations; any history of criminal behavior, including crimes  
14 against children; the age of the minor; the evidence of abuse or  
15 neglect of the minor or siblings of the minor by the parent; and the  
16 current relationship between the parent and the minor and the manner  
17 in which the parent has exercised parental rights and duties in the  
18 past.

19 L. Consent to adoption is not required from:

20 1. A parent who has a mental illness or mental deficiency, as  
21 defined by paragraphs f and g of Article II of Section 6-201 of  
22 Title 43A of the Oklahoma Statutes, which renders the parent  
23 incapable of adequately and appropriately exercising parental  
24 rights, duties and responsibilities;

1           2. The continuation of parental rights would result in harm or  
2 threatened harm to the minor; and

3           3. The mental illness or mental deficiency of the parent is  
4 such that it will not respond to treatment, therapy or medication  
5 and, based upon competent medical opinion, the condition will not  
6 substantially improve.

7           M. Consent to adoption is not required from a putative father  
8 who has been served with a Notice of Plan for Adoption pursuant to  
9 Section 7503-3.1 of this title and who returns the form to the  
10 Paternity Registry of the Department of Human Services or agency or  
11 attorney who served him explicitly waiving a right to notice and  
12 legal rights to the minor or who fails to return the form pursuant  
13 to Section 7503-3.1 of this title in time for the form to be  
14 received by the Paternity Registry of the Department of Human  
15 Services or the agency or attorney who served him within thirty (30)  
16 days from the date the Notice of Plan for Adoption was served upon  
17 the putative father.

18           N. Consent to adoption is not required from:

19           1. An individual who has permanently relinquished parental  
20 rights and responsibilities to the minor pursuant to the Oklahoma  
21 Adoption Code;

22           2. An individual whose parental relationship to a minor has  
23 been legally terminated or legally determined not to exist; or

24           3. The personal representative of a deceased parent's estate.

1       O. Consent to adoption is not required from a parent who has  
2 voluntarily placed a minor child in the care of a licensed child  
3 care institution or child-placing agency, if the minor has remained  
4 in out-of-home care for eighteen (18) months or more, and the parent  
5 has willfully failed to substantially comply for twelve (12)  
6 consecutive months out of the fourteen-month period immediately  
7 preceding the filing of the petition for adoption with a reasonable  
8 written plan of care. Provided, the willful failure to comply with  
9 the written plan of care may not be a ground for adoption without  
10 consent unless the plan of care, at the time it was initially  
11 executed by the parent, contained notice that failure to  
12 substantially comply constitutes grounds for adoption without  
13 consent. The reasonableness of the plan shall be a question of fact  
14 to be determined by the court.

15       SECTION 3. This act shall become effective November 1, 2007.

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17       51-1-7819       SAB       04/10/07

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