ENGROSSED SENATE
BILL NO. 469 By: Easley of the Senate

and

Peters of the House

[children – custody – intent of Legislature –

exceptions to parental consent -

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. 2006, Section 21.1), is amended to read as follows:

Section 21.1 A. Except as otherwise provided by this section, custody should 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. It is the intent of the Legislature that every attempt be made to place a child with a member of the child's family.

~~B.~~ C. In addition to subsection ~~D~~ E 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.~~ D. 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.~~ E. 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.~~ F. 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.~~ G. 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. AMENDATORY 10 O.S. 2001, Section 7505-4.2, is amended to read as follows:

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

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

1. In substantial compliance with 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 such minor's support if no provision for support is provided in an order. For the purposes of this section, support for the minor shall benefit the minor by providing a necessity. Payments that

shall not be considered support shall include, but are not limited to:

a. genetic and drug testing;

b. supervised visitation;

c. counseling for any person other than the minor;

d. court fees and costs;

e. restitution payments; and

f. transportation costs for any person other than the minor, unless such transportation expenses are specifically ordered in lieu of support in a court order.

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

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

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

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has exercised parental rights or duties towards the minor,

including, but not limited to, failure to contribute to the support of the minor to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption without such father's consent.

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

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

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

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

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

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

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

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

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

b. has not exercised parental rights and responsibilities.

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

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

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

J. Consent to adoption is not required from a parent who has been convicted in a criminal action of having caused the death of a

sibling of the minor as a result of the physical or sexual abuse or chronic neglect of such sibling.

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

L. Consent to adoption is not required from:

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

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

3. The mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication

and, based upon competent medical opinion, the condition will not substantially improve.

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

N. Consent to adoption is not required from:

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

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

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

O. Consent to adoption is not required from a parent who has voluntarily placed a minor child in the care of a licensed child care institution or child-placing agency, if the minor has remained in out-of-home care for eighteen (18) months or more, and the parent

has willfully failed to substantially comply for twelve (12) consecutive months out of the fourteen-month period immediately preceding the filing of the petition for adoption with a reasonable written plan of care. Provided, the willful failure to comply with the written plan of care may not be a ground for adoption without consent unless the plan of care, at the time it was initially executed by the parent, contained notice that failure to substantially comply constitutes grounds for adoption without consent. The reasonableness of the plan shall be a question of fact to be determined by the court.

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

Passed the Senate the 13th day of March, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2007.

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Presiding Officer of the House of Representatives