

THE HOUSE OF REPRESENTATIVES
Monday, April 16, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 469

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 469 - By: EASLEY of the Senate and PETERS of the House.

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. 2006, Section 21.1), which relates to custody; stating intent of Legislature; amending 10 O.S. 2001, Section 7505-4.2, which relates to consent for adoption; specifying classifications for support; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by
2 Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2006, Section 21.1), is amended to
3 read as follows:
- 4 Section 21.1 A. Except as otherwise provided by this section, custody should be
5 awarded or a guardian appointed in the following order of preference according to the
6 best interests of the child to:
- 7 1. A parent or to both parents jointly;
 - 8 2. A grandparent;
 - 9 3. A person who was indicated by the wishes of a deceased parent;
 - 10 4. A relative of either parent;

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

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

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

7 C. In addition to subsection ~~D~~ E of this section, when a parent having custody of a
8 child becomes deceased or when custody of a child is judicially removed from the parent
9 having custody of the child, the court may only deny the noncustodial parent custody of
10 the child or guardianship of the child if:

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

15 (1) in substantial compliance with a support provision or an order
16 entered by a court of competent jurisdiction adjudicating the
17 duty, amount, and manner of support, or

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

21 b. the denial of custody or guardianship is in the best interest of the
22 child;

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

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

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

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

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

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

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

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

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

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

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

- 16 a. a person who is or has been subject to the registration requirements of
17 the Oklahoma Sex Offenders Registration Act or any similar act in any
18 other state,
19 b. a person who has been convicted of a crime listed in the Oklahoma
20 Child Abuse Reporting and Prevention Act or in Section 582 of Title 57
21 of the Oklahoma Statutes,

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

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

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

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

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

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

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

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

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

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

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

19 1. In substantial compliance with an order entered by a court of competent
20 jurisdiction adjudicating the duty, amount, and manner of support; or

21 2. According to such parent's financial ability to contribute to such minor's support
22 if no provision for support is provided in an order. For the purposes of this section,

1 support for the minor shall benefit the minor by providing a necessity. Payments that
2 shall not be considered support shall include, but are not limited to:

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

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

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

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

19 2. The minor is placed for adoption within fourteen (14) months of birth, and the
20 father or putative father fails to show that he has exercised parental rights or duties
21 towards the minor, including, but not limited to, failure to contribute to the support of
22 the minor to the extent of his financial ability, which may include consideration of his

1 failure to contribute to the support of the mother of the child to the extent of his financial
2 ability during her term of pregnancy. Failure to contribute to the support of the mother
3 during her term of pregnancy shall not in and of itself be grounds for finding the minor
4 eligible for adoption without such father's consent.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

- 14 a. has not maintained frequent and regular contact with the minor
15 through frequent and regular visitation or frequent and regular
16 communication to or with the minor, or
17 b. has not exercised parental rights and responsibilities.

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

21 1. Physically or sexually abused the minor or a sibling of such minor or failed to
22 protect the minor or a sibling of such minor from physical or sexual abuse that is heinous

1 or shocking to the court or that the minor or sibling of such minor has suffered severe
2 harm or injury as a result of such physical or sexual abuse; or

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

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

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

20 L. Consent to adoption is not required from:

21 1. A parent who has a mental illness or mental deficiency, as defined by
22 paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes,

1 which renders the parent incapable of adequately and appropriately exercising parental
2 rights, duties and responsibilities;

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

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

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

16 N. Consent to adoption is not required from:

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

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

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 04-12-07 -
13 DO PASS, As Amended.