

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2187

By: Wesselhoft and Kern

4
5
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,
8 Section 21.1, as last amended by Section 2, Chapter
9 415, O.S.L. 2004 (10 O.S. Supp. 2006, Section 21.1),
10 which relates to custody or guardianship; expanding
11 custody proceedings; clarifying language; amending 10
12 O.S. 2001, Section 7004-1.5, which relates to the
13 Kinship Foster Care Program; providing for support
14 under certain circumstances; amending 10 O.S. 2001,
15 Section 22.1, which relates to grandparent care of
16 grandchildren; expanding care assistance program;
17 repealing 10 O.S. 2001, Section 9, which relates to
18 abuse of parental authority; and providing an
19 effective date.

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

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

24 Section 21.1 A. ~~Except as otherwise provided by this section,~~
~~custody should~~ Custody or guardianship may 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;

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

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 the custody or guardianship action,
20 the ~~noncustodial~~ parent has willfully failed, refused,
21 or neglected to contribute to the ~~child's~~ support of
22 the child:

23 ~~(1)~~ a. in substantial compliance with a support provision or
24 an order entered by a court of competent jurisdiction

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

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

9 ~~b.~~ ~~The denial of custody or guardianship is in the best~~
10 ~~interest of the child.~~

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

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

21 b. The parent or parents have not maintained regular
22 visitation or communication with the child.

23 For purposes of this paragraph, incidental or token visits or
24 communications shall not be considered in determining whether a

1 parent or parents have regularly maintained visitation or
2 communication;

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

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

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

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

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

21 b. has been convicted of a crime listed in the Oklahoma
22 Child Abuse Reporting and Prevention Act or in Section
23 582 of Title 57 of the Oklahoma Statutes,

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

19 C. ~~The court shall consider the preference of the child in~~
20 ~~awarding custody of the child pursuant to Section 113 of Title 43 of~~
21 ~~the Oklahoma Statutes~~ A custody determination made in accordance
22 with subsection B of this section shall not be modified unless the
23 person seeking the modification proves that:

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

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

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

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

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

18 ~~c. is an alcohol dependent person or a drug dependent~~
19 ~~person as established by clear and convincing evidence~~
20 ~~and who can be expected in the near future to inflict~~
21 ~~or attempt to inflict serious bodily harm to himself~~
22 ~~or herself or another person as a result of such~~
23 ~~dependency,~~

- 1 d. ~~has been convicted of domestic abuse within the past~~
2 ~~five (5) years,~~
- 3 e. ~~is residing with a person who is or has been subject~~
4 ~~to the registration requirements of the Oklahoma Sex~~
5 ~~Offenders Registration Act or any similar act in any~~
6 ~~other state,~~
- 7 f. ~~is residing with a person who has been convicted of a~~
8 ~~crime listed in the Oklahoma Child Abuse Reporting and~~
9 ~~Prevention Act or in Section 582 of Title 57 of the~~
10 ~~Oklahoma Statutes, or~~
- 11 g. ~~is residing with a person who has been convicted of~~
12 ~~domestic abuse within the past five (5) years.~~

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

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

1 ~~e. an alcohol dependent person or a drug dependent person~~
2 ~~as established by clear and convincing evidence and~~
3 ~~who can be expected in the near future to inflict or~~
4 ~~attempt to inflict serious bodily harm to himself or~~
5 ~~herself or another person as a result of such~~
6 ~~dependency,~~

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

9 ~~e. a person who is residing with an individual who is or~~
10 ~~has been subject to the registration requirements of~~
11 ~~the Oklahoma Sex Offenders Registration Act or any~~
12 ~~similar act in any other state,~~

13 ~~f. a person who is residing with a person who has been~~
14 ~~previously convicted of a crime listed in the Oklahoma~~
15 ~~Child Abuse Reporting and Prevention Act or in Section~~
16 ~~582 of Title 57 of the Oklahoma Statutes, or~~

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

20 ~~3. Custody of, guardianship of, or any visitation with a child~~
21 ~~shall not be granted to any person if it is established that the~~
22 ~~eustody, guardianship or visitation will likely expose the child to~~
23 ~~a foreseeable risk of material harm.~~

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

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

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

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

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

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

14 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7004-1.5, is
15 amended to read as follows:

16 Section 7004-1.5 A. There is hereby established a Kinship
17 Foster Care Program in the Department of Human Services.

18 B. 1. a. When a child has been removed from the ~~child's~~ home of
19 the child and is in the care and custody of the
20 Department, the Department shall attempt to place the
21 child with a person determined by the Department to
22 have a kinship relationship with the child if ~~such~~ the
23 placement is in the best interests of the child.

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1 b. ~~In determining a kinship placement for a child who has~~
2 ~~been removed from the custody of a custodial parent~~
3 ~~and placed with the Department in emergency or~~
4 ~~protective custody, priority shall be given by the~~
5 ~~Department to the placement of such the child with the~~
6 ~~noncustodial parent of the child unless such the~~
7 ~~placement is not in the best interests of the child.~~
8 ~~If it is determined by the Department that placement~~
9 ~~with the noncustodial parent is not in the best~~
10 ~~interests of the child, custody~~ Custody shall be
11 consistent with the provisions of Section 21.1 of this
12 title. If custody of the child cannot be made
13 pursuant to the provisions of Section 21.1 of this
14 title, the reason for ~~such~~ the determination shall be
15 specified in the agency records concerning the child.
16 ~~In addition, such the reasons~~ and shall be made known
17 to the court by the Department. ~~A child's~~ The health,
18 safety ~~or~~ and welfare of the child shall be of
19 paramount concern in any placement.

20 2. The Department shall establish, in accordance with the
21 provisions of this section, eligibility standards for becoming a
22 kinship foster care family.

23 C. 1. Upon the completion of the records search to ascertain
24 if there is an Oklahoma record of criminal history for the

1 prospective kinship foster parent or any other adult residing in the
2 ~~prospective kinship foster parent's home~~ of the prospective kinship
3 foster parent, and subject to any other standards established by the
4 Department, a child may be placed in the kinship home. A kinship
5 foster parent shall not be entitled to any payments for providing
6 foster care until such foster parent receives final approval from
7 the Department to be a kinship foster parent.

8 2. Following placement, the Oklahoma State Bureau of
9 Investigation shall complete a national criminal history records
10 search based upon submission of fingerprints for any kinship foster
11 parent and any adult residing in the home of ~~such~~ the parent, and
12 shall make the results of the records search available to the
13 Department pursuant to the provisions of the Oklahoma Child Care
14 Facilities Licensing Act. The Director of Human Services or
15 designee may authorize an exception to the fingerprinting
16 requirement for an adult residing in the kinship foster care home
17 who has a severe physical condition which precludes ~~such person's~~
18 the person from being fingerprinted.

19 3. The Department shall maintain the confidentiality of the
20 records search results and shall use the results only for purposes
21 of determining ~~a person's~~ the eligibility of a person to become a
22 kinship foster parent.

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1 4. It shall be unlawful, except for the purpose of determining
2 ~~a person's~~ the eligibility of a person for kinship foster care, for
3 any person to disclose information obtained under this subsection.

4 5. Any person violating the provisions of this subsection shall
5 be guilty of a misdemeanor.

6 D. A person related by blood, marriage, adoption and by tie or
7 bond to a child and/or to whom has been ascribed a family
8 relationship role with the ~~child's~~ parents of the child or the child
9 may be eligible for approval as a kinship foster care parent.

10 E. The Department shall determine whether the person is able to
11 effectively care for the foster child by:

12 1. Reviewing personal and professional references;

13 2. Observing during a visit to the home of the kinship foster
14 care family; and

15 3. Interviewing the kinship foster care parent.

16 F. ~~When the kinship foster parent is finally approved by the~~
17 ~~Department, in accordance with rules promulgated by the Commission~~
18 ~~for Human Services regarding foster care services, the~~ The kinship
19 foster care family shall be eligible to receive payment for the full
20 foster care rate for the care of the child and any other benefits
21 that might be available to foster parents, whether monetary or in
22 services upon the placement of the child with the kinship foster
23 parent. ~~If a child is placed with a kinship foster parent prior to~~
24 ~~the home's final approval of the home as a foster care home, the~~

1 ~~Department shall immediately refer such child and family for~~
2 ~~assistance through the Temporary Assistance for Needy Families~~
3 ~~Program.~~

4 G. 1. The Department and the kinship foster care parent shall
5 develop a plan for the care of the child, which shall be
6 periodically reviewed and updated.

7 2. The kinship foster parent shall cooperate with any
8 activities specified in the case plan for the child including, but
9 not limited to, counseling, therapy, court sessions, visits with the
10 ~~child's~~ parents of the child or other family members, and training.

11 H. The Commission for Human Services shall promulgate rules
12 necessary to carry out the provisions of this section pursuant to
13 the Administrative Procedures Act.

14 SECTION 3. AMENDATORY 10 O.S. 2001, Section 22.1, is
15 amended to read as follows:

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

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

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

9 2. It is the intent of the Oklahoma Legislature in enacting
10 this section to:

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

1 placement by the Department of Human Services because
2 of abuse, abandonment, or neglect, but who may
3 successfully be able to reside in the care of
4 relatives within the third degree of relationship to
5 the child, and

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

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

20 C. Grandparents or other ~~such~~ relatives who qualify for and
21 participate in the relative support program are not required to be
22 certified as foster parents or to meet the foster care requirements
23 but shall be capable of providing a physically safe environment and
24 a stable, supportive home for the children under their care.

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

6 E. ~~Within available funding specified by this section, the~~
7 ~~relative support program may provide grandparents or other suitable~~
8 ~~relatives with:~~

9 1. ~~Case management services;~~

10 2. ~~Monthly stipends or other financial assistance, family~~
11 ~~support and preservation services;~~

12 3. ~~Flexible funds to enable the grandparents or other relatives~~
13 ~~to meet unusual or crisis expenditures, including but not limited~~
14 ~~to, making housing deposits, utility deposits, or to purchase beds,~~
15 ~~clothing and food;~~

16 4. ~~Subsidized child care and after school care;~~

17 5. ~~Respite care;~~

18 6. ~~Transportation;~~

19 7. ~~Counseling;~~

20 8. ~~Support groups;~~

21 9. ~~Assistance in accessing parental child support payments;~~

22 10. ~~Aid in accessing food stamps, Social Security and other~~
23 ~~public benefits;~~

24 11. ~~Information about legal options for relative caregivers;~~

1 ~~12. Assistance for establishing a relative guardianship or~~
2 ~~relative custodianship for the child;~~
3 ~~13. Available volunteer attorney services;~~
4 ~~14. Mediation/family group conferencing; and~~
5 ~~15. Community-based services and state or federal programs~~
6 ~~available to the child and relatives to support the child's safety,~~
7 ~~growth and health development.~~

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

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

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

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

14 ~~I. Additional assistance may be made available to qualified~~
15 ~~grandparents or other relatives within the third degree of~~
16 ~~relationship and children, based upon specific needs of the~~
17 ~~grandparent or other relative of the child and the specific needs of~~
18 ~~the child. Such assistance shall also be subject to available~~
19 ~~funding pay the full foster care rate for the care of the child and~~
20 ~~any other benefits that might be available to foster parents,~~
21 ~~whether monetary or in services.~~

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

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

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

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

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

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

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

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

3 5. The brochure may 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 ~~Θ.~~ J. 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 4. REPEALER 10 O.S. 2001, Section 9, is hereby
15 repealed.

16 SECTION 5. This act shall become effective November 1, 2007.

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