

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2530

By: Steele

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5  
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,  
8 Section 7003-2.4, as last amended by Section 1,  
9 Chapter 196, O.S.L. 2007 (10 O.S. Supp. 2007, Section  
10 7003-2.4), which relates to an emergency custody  
11 hearing; providing for a specific form to be filed of  
12 record in lieu of a hearing by agreement of certain  
13 persons; and providing an effective date.

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

15 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-2.4, as  
16 last amended by Section 1, Chapter 196, O.S.L. 2007 (10 O.S. Supp.  
17 2007, Section 7003-2.4), is amended to read as follows:

18 Section 7003-2.4 A. 1. The peace officer or an employee of  
19 the court shall provide the parent, legal guardian, or custodian of  
20 a child immediate written notice of the protective or emergency  
21 custody of the child whenever possible.

22 2. The written notice shall:

- 23 a. inform the parents, legal guardian, or custodian that  
24 the child has been removed from the home,

1           b.    inform the parent, legal guardian, or custodian of the  
2                child that an emergency custody hearing to determine  
3                custody of the child will occur within two (2)  
4                judicial days from the date the child was removed from  
5                the home, and

6           c.    contain information about the:

7                (1)   emergency custody hearing process including, but  
8                not limited to, the date, time and place that the  
9                child was taken into protective or emergency  
10               custody,

11               (2)   nature of the allegation that led to placement of  
12               the child into protective or emergency custody,

13               (3)   address and telephone number of the local and  
14               county law enforcement agencies,

15               (4)   phone number of the local child welfare office of  
16               the Department of Human Services, and

17               (5)   right of the parent, legal guardian or custodian  
18               to contact an attorney.

19           3.    The written notice shall also contain the following or  
20           substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE  
21           OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL  
22           STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR  
23           COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS  
24           A PARENT MAY BE TERMINATED."

1 B. 1. Within the next two (2) judicial days following the  
2 child being taken into protective or emergency custody, the court  
3 shall conduct an emergency custody hearing to determine whether  
4 evidence or facts exist that are sufficient to demonstrate to the  
5 court there is reason to believe the child is in need of protection  
6 due to abuse or neglect, or is in surroundings that are such as to  
7 endanger the health, safety or welfare of the child.

8 2. At the emergency custody hearing, the court shall advise the  
9 parent, legal guardian or custodian of the child in writing of the  
10 procedure which will be followed with regard to determining custody  
11 of the child, including, but not limited to:

- 12 a. any right of the parent or legal guardian or custodian  
13 to testify and present evidence at court hearings,
- 14 b. the right to be represented by an attorney at court  
15 hearings as authorized by law,
- 16 c. the consequences of failure to attend any hearings  
17 which may be held, and
- 18 d. the right to appeal and the procedure for appealing  
19 the finding of a court on custody issues as authorized  
20 by law.

21 3. a. At the emergency custody hearing, the court shall:  
22 (1) release the child to the child's parent, legal  
23 guardian or custodian or other responsible adult  
24 without conditions or under such conditions as

1 the court finds reasonably necessary to ensure  
2 the health, safety or welfare of the child, or  
3 (2) continue the child in or place the child into  
4 emergency custody if continuation of the child in  
5 the child's home is contrary to the health,  
6 safety or welfare of the child,  
7 (3) obtain information from the parent, legal  
8 guardian or custodian necessary to identify and  
9 locate kinship placement resources. If such  
10 information indicates that within one (1) year of  
11 the emergency custody hearing the child had  
12 resided with a grandparent for six (6) months,  
13 and that such grandparent was the primary  
14 caregiver and provided primary financial support  
15 for the child during such time, the court shall  
16 provide notice and an opportunity to be heard at  
17 future hearings to such grandparent, and  
18 (4) require the Department to provide to any  
19 custodian or other person caring for the child  
20 information on Department of Human Services  
21 programs and services available to the child and  
22 provide written notice of any further proceedings  
23 to any foster or preadoptive parents or relatives  
24 providing care for a child.

1           b.    If a child has been removed from the custodial parent  
2                   of the child and the court, in the best interests of  
3                   the child, is unable to release the child to the  
4                   custodial parent, the court shall give priority for  
5                   placement of the child with the noncustodial parent of  
6                   the child unless such placement would not be in the  
7                   child's best interests.  If the court cannot place the  
8                   child with the noncustodial parent, custody shall be  
9                   consistent with the provisions of Section 21.1 of this  
10                  title.  If custody of the child cannot be made  
11                  pursuant to the provisions of Section 21.1 of this  
12                  title, the reason for such determination shall be  
13                  documented in the court record.

14           C.   If it is determined by agreement of the district attorney  
15 and the Department of Human Services that an emergency custody  
16 hearing is not needed, the following form or a substantially similar  
17 form, shall be completed and signed by the district attorney and the  
18 Department and filed of record:

19                           IN THE DISTRICT COURT OF                    COUNTY

20   STATE OF OKLAHOMA

21 IN THE MATTER OF:

22 \_\_\_\_\_  
23 ALLEGED DEPRIVED CHILD (REN)

24   MEMORANDUM

1 DATE OF DECLINE:

2 CHILD WELFARE WORKER:

3 ASSISTANT DISTRICT ATTORNEY:

4 REASON FOR DECLINE:

5     INVESTIGATION REVEALED ALLEGATIONS NOT CONFIRMED

6     SERVICES WERE OFFERED AND ACCEPTED

7     PARENT/CARETAKER HAS TAKEN APPROPRIATE STEPS TO

8     PROTECT CHILD FROM HARM

9     OTHER:

10 NOTES:

11

12 CHILD(REN) RELEASED TO:

13

\_\_\_\_\_

14

ASSISTANT DISTRICT ATTORNEY

15 I work for the Department of Human Services and am requesting that

16 the District Attorney's Office release the above-mentioned

17 child(ren) from temporary emergency custody and that a Petition not

18 be filed for court intervention.

19

\_\_\_\_\_

20 DHS CHILD WELFARE WORKER;

21 D. 1. Except as otherwise provided by this subsection, a

22 petition for a deprived child proceeding shall be filed and a

23 summons issued within five (5) judicial days from the date of

24 assumption of custody; provided, however, such time period may be

1 extended a period of time not to exceed fifteen (15) calendar days  
2 from the date of assumption of custody of the child if, upon request  
3 of the district attorney at the emergency custody hearing, the court  
4 determines there are compelling reasons to grant additional time for  
5 the filing of the petition for a deprived child proceeding.

6 2. If the petition is not filed as required by this subsection,  
7 then the emergency custody order shall expire. The district  
8 attorney shall submit for filing in the court record a written  
9 record specifying the reasons why the petition was not filed and  
10 specifying to whom the child was released.

11 ~~D.~~ E. If a petition is filed within the time period specified  
12 in subsection ~~C~~ D of this section, the emergency custody order shall  
13 remain in force and effect for not longer than sixty (60) days,  
14 except as otherwise provided by this subsection.

15 The emergency custody order shall not be extended beyond sixty  
16 (60) days absent a showing that such further extension is necessary  
17 to ensure the health, safety or welfare of the child and is in the  
18 best interests of the child.

19 ~~E.~~ F. 1. The court may hold additional hearings at such  
20 intervals as may be determined necessary by the court to provide for  
21 the health, safety or welfare of the child.

22 2. The parent, legal guardian or custodian of the child, the  
23 child's attorney, the district attorney and guardian ad litem if  
24

1 appointed shall be given prior adequate notice of the date, time,  
2 place and purpose of any hearing by the court.

3 ~~F.~~ G. In scheduling hearings, the court shall give priority to  
4 proceedings in which a child is in emergency custody.

5 ~~G.~~ H. 1. An order of the court providing for the removal of a  
6 child alleged to be deprived from the home of such child shall not  
7 be entered unless the court makes a determination:

8 a. that continuation of the child in the child's home is  
9 contrary to the health, safety or welfare of the  
10 child, and

11 b. as to whether or not reasonable efforts were made to  
12 prevent the need for the removal of the child from the  
13 child's home, or

14 c. as to whether or not an absence of efforts to prevent  
15 the removal of the child from the child's home is  
16 reasonable because the removal is due to an alleged  
17 emergency and is for the purpose of providing for the  
18 health, safety or welfare of the child, or

19 d. that reasonable efforts to provide for the return of  
20 the child to the child's home are not required  
21 pursuant to Section 7003-4.6 of this title; provided,  
22 however, upon such determination, the court shall  
23 inform the parent that a permanency hearing will be  
24 held within thirty (30) days from the determination.

1        2. In all proceedings or actions pursuant to this subsection,  
2 the child's health, safety or welfare shall be the paramount  
3 concern.

4        SECTION 2. This act shall become effective November 1, 2008.

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6        51-2-8316        SAB        01/12/08

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