

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2802

By: Brown

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,
8 Section 7006-1.1, which relates to termination of
9 parental rights in certain situations; decreasing
10 amount of time required to constitute abandonment in
11 certain situation; expanding the definition of
12 abandonment; modifying the authority and conditions
13 for termination of parental rights; amending 10 O.S.
14 2001, Section 7006-1.6, which relates to deprived
15 children in the custody of the Department of Human
16 Services; modifying certain identification
17 requirements; modifying time for filing petitions for
18 termination of parental rights; 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 7006-1.1, is
22 amended to read as follows:

23 Section 7006-1.1 A. Pursuant to the provisions of the Oklahoma
24 Children's Code, the finding that a child is delinquent, in need of
supervision or deprived shall not deprive the parents of the child
of their parental rights, but a court may terminate the rights of a
parent to a child in the following situations; provided, however,

1 the paramount consideration in proceedings concerning termination of
2 parental rights shall be the health, safety or welfare and best
3 interests of the child:

4 1. Upon a written consent of a parent, including a parent who
5 is a minor, acknowledged as provided in paragraph 4 of subsection B
6 of Section 7503-2.1 of this title, who desires to terminate such
7 parent's parental rights; provided that the court finds that such
8 termination is in the best interests of the child;

9 2. A finding that a parent who is entitled to custody of the
10 child has abandoned the child. For purposes of this paragraph the
11 term "abandonment" includes, but is not limited to, the following:

12 a. the parent has left the child alone or in the care of
13 another who is not the parent of the child without
14 identifying the child or furnishing a means of
15 identification for the child, the whereabouts of the
16 parents are unknown, and the child's identity cannot
17 be ascertained by the exercise of reasonable
18 diligence,

19 b. the parent has voluntarily left the child alone or in
20 the care of another who is not the parent of the child
21 and expressed a willful intent by words, actions, or
22 omissions not to return for the child, ~~or~~

23 c. the parent fails to establish and/or maintain a
24 substantial and positive relationship with the child

1 for a period of ~~six (6)~~ four (4) consecutive months
2 out of the last ~~fourteen (14)~~ twelve (12) months
3 immediately preceding the filing of a petition for
4 termination of parental rights. For purposes of this
5 paragraph, "establish and/or maintain a substantial
6 and positive relationship" includes, but is not
7 limited to:

- 8 (1) frequent and regular contact with the minor
9 through frequent and regular visitation and/or
10 frequent and regular communication to or with the
11 child, and
12 (2) the exercise of parental rights and
13 responsibilities.

14 Incidental or token visits or communications shall not
15 be sufficient to establish and/or maintain a
16 substantial and positive relationship with the child,
17 or

- 18 d. the parent is incarcerated for a period of more than
19 one (1) year;

20 3. A finding that the child is an abandoned infant;

21 4. A finding that the parent of a child:

- 22 a. has voluntarily placed physical custody of the child
23 with the Department of Human Services or with a child-
24 placing agency for out-of-home placement,

- 1 b. has not complied with the placement agreement, and
2 c. has not demonstrated during such period a firm
3 intention to resume physical custody of the child or
4 to make permanent legal arrangements for the care of
5 the child;

6 5. A finding that:

- 7 a. the child ~~has been adjudicated to be~~ is deprived, and
8 b. such condition is caused by or contributed to by acts
9 or omissions of the parent, and
10 c. termination of parental rights is in the best
11 interests of the child, and
12 d. the parent has failed to show that the condition which
13 led to the adjudication of a child deprived has been
14 corrected although the parent has been given not less
15 than ~~the time specified by Section 7003-5.5 of this~~
16 title three (3) months to correct the condition;

17 6. A finding that ~~a subsequent child has been born to a parent~~
18 ~~whose parental rights to any other child has been terminated by the~~
19 ~~court; provided, that the applicant shall show that the condition~~
20 ~~which led to the making of the finding which resulted in the~~
21 ~~termination of such parent's parental rights to the other child has~~
22 ~~not been corrected. As used in this paragraph, the term "applicant"~~
23 ~~shall include, but not be limited to, a district attorney or the~~
24 ~~child's attorney;:~~

- a. the child is deprived,
- b. parental rights to another child of the parent have been terminated and the conditions that led to the termination have not been corrected, and
- c. termination of parental rights is in the best interest of the child;

7. A finding that a parent who does not have custody of the child has for a period of ~~twelve (12)~~ six (6) consecutive months out of the last ~~fourteen (14)~~ twelve (12) months immediately preceding the filing of a petition for termination of parental rights, willfully failed, refused or neglected to contribute to the support of ~~such~~ the child:

- a. in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
- b. according to ~~such parent's~~ the financial ability of the parent to contribute to ~~such~~ the child's support if no provision for support is provided in an order.

Incidental or token support shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

8. A conviction in a criminal action pursuant to the provisions of Sections 1021.3, 1111 or 1123 of Title 21 of the Oklahoma Statutes, or Section 7115 of this title;

1 9. A conviction in a criminal action that the parent:

2 a. caused the death of a child as a result of the
3 physical or sexual abuse or chronic abuse or chronic
4 neglect of ~~such~~ the child,

5 b. caused the death of a sibling of the child as a result
6 of the physical or sexual abuse or chronic abuse or
7 chronic neglect of ~~such~~ the sibling,

8 c. committed the murder of any child or aided or abetted,
9 attempted, conspired or solicited to commit murder of
10 any child,

11 d. committed voluntary manslaughter of ~~another~~ any child
12 ~~of the parent~~, or aided or abetted, attempted,
13 conspired or solicited to commit voluntary

14 manslaughter of ~~another~~ any child ~~of the parent~~, or

15 e. committed a felony assault that has resulted in
16 serious bodily injury to ~~the~~ a child ~~or another child~~
17 ~~of the parent~~;

18 10. A finding in a deprived child action either that:

19 a. the parent has physically or sexually abused the child
20 or a sibling of ~~such~~ the child or failed to protect
21 the child or a sibling of ~~such~~ the child from physical
22 or sexual abuse that is heinous or shocking to the
23 court,

24

- 1 b. the child or sibling of ~~such~~ the child has suffered
2 severe harm or injury as a result of such physical or
3 sexual abuse,
- 4 c. the parent has physically or sexually abused the child
5 or a sibling of ~~such~~ the child or failed to protect
6 the child or a sibling of ~~such~~ the child from physical
7 or sexual abuse subsequent to a previous finding that
8 ~~such~~ the parent has physically or sexually abused the
9 child or a sibling of ~~such~~ the child or failed to
10 protect the child or a sibling of ~~such~~ the child from
11 physical or sexual abuse,
- 12 d. the child has been adjudicated a deprived child,
13 pursuant to the provisions of the Oklahoma Children's
14 Code, as a result of a single incident of severe
15 sexual abuse, severe neglect or the infliction of
16 serious bodily injury or torture to the child, a
17 sibling of the child, or a child within the household
18 where the child resides, by the parent of the child,
19 or
- 20 e. the parent has inflicted chronic abuse, chronic
21 neglect or torture on the child, a sibling of the
22 child or another child within the household where the
23 child resides;
- 24

1 11. The child was conceived as a result of rape or an act
2 committed outside of this state which if committed in this state
3 would constitute rape. This paragraph shall only apply to the
4 parent who committed the rape or act and whose child has been placed
5 out of the home;

6 12. A finding that all of the following exist:

- 7 a. the child has been adjudicated deprived, and
8 b. custody of the child has been placed outside the home
9 of a natural or adoptive parent, guardian or extended
10 family member, and
11 c. the parent whose rights are sought to be terminated
12 has been incarcerated, and
13 d. the incarceration shall be for more than one (1) year,

14 or continuation of parental rights would result in
15 harm to the child based on consideration of the
16 following factors, among others:

- 17 (1) the duration of incarceration and its detrimental
18 effect on the parent/child relationship_{7,1}
19 (2) any previous incarcerations_{7,1}
20 (3) any history of criminal behavior, including
21 crimes against children_{7,1}
22 (4) the age of the child_{7,1}
23 (5) the evidence of abuse or neglect of the child or
24 siblings of the child by the parent_{7,1} and

1 (6) the current relationship between the parent and
2 the child and the manner in which the parent has
3 exercised parental rights and duties in the past,
4 and

5 e. termination of parental rights is in the best
6 interests of the child.

7 Provided, that the incarceration of a parent shall not in and of
8 itself be sufficient to deprive a parent of parental rights;

9 13. A finding that all of the following exist:

10 a. the child has been adjudicated deprived, and

11 b. custody of the child has been placed outside the home
12 of a natural or adoptive parent, guardian or extended
13 family member, and

14 c. the parent whose rights are sought to be terminated
15 has a mental illness or mental deficiency, as defined
16 by Section 6-201 of Title 43A of the Oklahoma
17 Statutes, which renders the parent incapable of
18 adequately and appropriately exercising parental
19 rights, duties and responsibilities, and

20 d. the continuation of parental rights would result in
21 harm or threatened harm to the child, and

22 e. the mental illness or mental deficiency of the parent
23 is such that it will not respond to treatment, therapy
24 or medication and, based upon competent medical

1 opinion, the condition will not substantially improve,
2 and

3 f. termination of parental rights is in the best
4 interests of the child.

5 Provided, a finding that a parent has a mental illness or mental
6 deficiency shall not in and of itself deprive the parent of his or
7 her parental rights;

8 14. The parent of the child has a history of extensive, abusive
9 and chronic use of drugs or alcohol and has resisted treatment for
10 this problem during a ~~three-year~~ an eighteen-month period
11 immediately prior to the filing of the petition which brought that
12 child to the ~~court's~~ attention of the court;

13 15. A child has been placed in foster care by the Department of
14 Human Services for ~~fifteen (15)~~ twelve (12) of the most recent
15 ~~twenty-two (22)~~ fourteen (14) months preceding the filing of the
16 petition. For purposes of this paragraph, a child shall be
17 considered to have entered foster care on the earlier of:

18 a. the adjudication date, or

19 b. the date that is sixty (60) days after the date on
20 which the child is removed from the home.

21 B. An order directing the termination of parental rights is a
22 final appealable order.

23 C. The provisions of this section shall not apply to adoption
24 proceedings and actions to terminate parental rights which do not

1 involve a petition for deprived status of the child. Such
2 proceedings and actions shall be governed by the Oklahoma Adoption
3 Code.

4 D. 1. A petition for termination of parental rights may be
5 filed by the district attorney or the attorney of a child alleged to
6 be or adjudicated deprived.

7 2. A petition for termination of parental rights shall be filed
8 by the district attorney for those petitions required to be filed
9 pursuant to the provisions of Section 7003-4.7 of this title.

10 3. If a child's attorney files a petition for the termination
11 of the parental rights of the parents of the child, the district
12 attorney shall join in the petition or motion for those petitions or
13 motions required to be filed by the district attorney pursuant to
14 the provisions of Section 7003-4.7 of this title.

15 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7006-1.6, is
16 amended to read as follows:

17 Section 7006-1.6 A. The Department of Human Services shall
18 identify those adjudicated deprived children who have been in the
19 Department's custody for ~~fifteen (15)~~ twelve (12) of the most recent
20 ~~twenty two (22)~~ fourteen (14) months, ~~and who were in out of home~~
21 ~~placement in the Department's custody as of November 17, 1997.~~ The
22 Department shall develop and provide to district attorneys a listing
23 of those cases for which a petition for termination of parental
24

1 rights should be filed, in accordance with the provisions of Section
2 7006-1.1 of this title.

3 B. The Department of Human Services shall provide to the State
4 Postadjudication Review Advisory Board a listing of those cases
5 identified in subsection A of this section and a listing of those
6 cases for which the Department has determined that a petition to
7 terminate parental rights is not required based upon the following:

8 1. The child is being cared for by a relative;

9 2. The Department has compelling reasons for determining such a
10 filing of termination of parental rights would not be in the best
11 interests of the child; or

12 3. The state has not provided to the family of the child,
13 consistent with the time period in the state case plan, such
14 services as the state may deem necessary for the safe return of the
15 child to the child's home, if reasonable efforts are required to be
16 made with respect to the child.

17 C. 1. The State Postadjudication Review Advisory Board shall
18 disseminate the listings from the Department of Human Services to
19 local postadjudication review boards for review. In the event that
20 no local postadjudication review board exists, it shall be the
21 responsibility of the State Postadjudication Review Advisory Board
22 to provide the means to implement the provisions of subsection B of
23 this section.

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1 2. In those cases where the local postadjudication review
2 boards or the Board disagree with the Department's determinations,
3 the local postadjudication review boards or Board shall provide to
4 district attorneys their recommendations of additional cases for
5 which a petition to terminate parental rights should be filed. The
6 Board shall forward a copy of ~~such~~ the recommendations to the
7 Department of Human Services.

8 D. The Department and district attorneys shall ~~utilize the~~
9 ~~following timetable for purposes of filing petitions for termination~~
10 ~~pursuant to this section:~~

11 1. ~~Within six (6) months after the end of the 2nd regular~~
12 ~~Session of the 46th Legislature, not less than one third (1/3) of~~
13 ~~such cases shall be referred, giving priority to children for whom~~
14 ~~the permanency plan is adoption and to children who have been in~~
15 ~~foster care for the greatest length of time;~~

16 2. ~~Within twelve (12) months after the end of such 2nd regular~~
17 ~~Session, not less than two thirds (2/3) of such cases shall be~~
18 ~~referred; and~~

19 3. ~~Within eighteen (18) months after the end of such 2nd~~
20 ~~regular Session, all of such cases shall be referred file petitions~~
21 ~~for termination within sixty (60) days of receiving a final listing~~
22 ~~of recommendations.~~

23 E. The Department of Human Services shall provide to the local
24 postadjudication review boards or the State Postadjudication Review

1 Advisory Board any information necessary to effectuate the
2 provisions of this section.

3 SECTION 3. This act shall become effective November 1, 2008.

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