

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3177

By: Coody

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 1, Chapter  
9 94, O.S.L. 2007 (10 O.S. Supp. 2007, Section 21.1),  
10 which relates to custody or guardianship; expanding  
11 custody proceedings; modifying procedure; modifying  
12 factors in determining if parent is unfit parent;  
13 providing for certain presumptions; providing for a  
14 more stringent standard when determining modification  
15 of custody; repealing 10 O.S. 2001, Section 9, which  
16 relates to abuse of parental authority; and providing  
17 an effective date.

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

19 SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as  
20 last amended by Section 1, Chapter 94, O.S.L. 2007 (10 O.S. Supp.  
21 2007, Section 21.1), is amended to read as follows:

22 Section 21.1 A. ~~Except as otherwise provided by this section,~~  
23 ~~custody should~~ Custody or guardianship may be awarded or a guardian  
24 ~~appointed~~ in the following order of preference according to the best  
interests of the child to:

- 25 1. A parent or to both parents jointly;
- 26 2. A grandparent;

1 3. A person who was indicated by the wishes of a deceased  
2 parent;

3 4. A relative of either parent;

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

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

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

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

18 1. ~~a.~~ For a period of at least twelve (12) months out of the  
19 last fourteen (14) months immediately preceding the  
20 determination of the custody or guardianship action,  
21 the ~~noncustodial~~ parent has willfully failed, refused,  
22 or neglected to contribute to the ~~child's~~ support of  
23 the child:

24

1       ~~(1)~~ a.    in substantial compliance with a support provision or  
2                    an order entered by a court of competent jurisdiction  
3                    adjudicating the duty, amount, and manner of support,  
4                    or

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

11               ~~b.~~   ~~The denial of custody or guardianship is in the best~~  
12               ~~interest of the child.~~

13 For purposes of this paragraph, incidental or token financial  
14 contributions shall not be considered in establishing whether a  
15 parent has satisfied the obligation of the parent pursuant to  
16 subparagraphs a and b of this paragraph;

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

23               b.    the parent or parents have not maintained regular  
24               visitation or communication with the child.

1 For purposes of this paragraph, incidental or token visits or  
2 communications shall not be considered in determining whether a  
3 parent or parents have regularly maintained visitation or  
4 communication;

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

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

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

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

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

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

22       ~~D. The court shall consider the preference of the child in~~  
23       ~~awarding custody of the child pursuant to Section 113 of Title 43 of~~  
24       ~~the Oklahoma Statutes~~ Except in cases of a temporary guardianship in

1 which the temporary guardian and the parent agree to modification, a  
2 custody determination made in accordance with subsection B of this  
3 section shall not be modified unless the person seeking the  
4 modification proves that:

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

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

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

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

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

22 ~~c. is an alcohol dependent person or a drug dependent~~  
23 ~~person as established by clear and convincing evidence~~  
24 ~~and who can be expected in the near future to inflict~~

1 ~~or attempt to inflict serious bodily harm to himself~~  
2 ~~or herself or another person as a result of such~~  
3 ~~dependency,~~

4 ~~d. has been convicted of domestic abuse within the past~~  
5 ~~five (5) years,~~

6 ~~e. is residing with a person who is or has been subject~~  
7 ~~to the registration requirements of the Oklahoma Sex~~  
8 ~~Offenders Registration Act or any similar act in any~~  
9 ~~other state,~~

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

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

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

19 ~~a. a person who is or has been subject to the~~  
20 ~~registration requirements of the Oklahoma Sex~~  
21 ~~Offenders Registration Act or any similar act in any~~  
22 ~~other state,~~

23 ~~b. a person who has been convicted of a crime listed in~~  
24 ~~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~~

1 ~~custody, guardianship or visitation will likely expose the child to~~  
2 ~~a foreseeable risk of material harm.~~

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

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

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

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

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

14 4. "Supervised visitation" means a program established pursuant  
15 to Section 110.1a of Title 43 of the Oklahoma Statutes.

16 SECTION 2. REPEALER 10 O.S. 2001, Section 9, is hereby  
17 repealed.

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

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20 51-2-8761 SAB 01/13/08

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