

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1861

By: Anderson

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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; requiring  
11 application of certain preference under certain  
12 circumstances; modifying certain determination and  
13 presumption; 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 21.1, as  
16 last amended by Section 1, Chapter 94, O.S.L. 2007 (10 O.S. Supp.  
17 2007, Section 21.1), is amended to read as follows:

18 Section 21.1 A. Except as otherwise provided by this section,  
19 custody ~~should~~ shall be awarded or a guardian appointed in the  
20 following order of preference ~~according to~~ if the court finds such  
preference to be in the best interests of the child ~~to~~:

- 21 1. A parent or to both parents jointly;
- 22 2. A grandparent;
- 23 3. A person who was indicated by the wishes of a deceased  
24 parent;

1 4. A relative of either parent;

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

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

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

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

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

19 (1) in substantial compliance with a support  
20 provision or an order entered by a court of  
21 competent jurisdiction adjudicating the duty,  
22 amount, and manner of support, or

23 (2) according to such parent's financial ability to  
24 contribute to the child's support if no provision

1 for support is provided in a decree of divorce or  
2 an order of modification subsequent thereto, and

3 b. the denial of custody or guardianship is in the best  
4 interest of the child;

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

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

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

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

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

19 D. 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.

22 E. 1. In every case involving the custody of, guardianship of  
23 or visitation with a child, the court shall determine whether any  
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1 individual seeking custody or who has custody of, guardianship of or  
2 visitation with a child:

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

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1 f. is residing with a person who has been convicted of a  
2 crime listed in the Oklahoma Child Abuse Reporting and  
3 Prevention Act or in Section 582 of Title 57 of the  
4 Oklahoma Statutes, or

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

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

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

14 b. a person who has been convicted of a crime listed in  
15 the Oklahoma Child Abuse Reporting and Prevention Act  
16 or in Section 582 of Title 57 of the Oklahoma  
17 Statutes, or any other felony conviction the basis of  
18 which was the injury or death of a child,

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

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

3 e. a person who is residing with an individual who is or  
4 has been subject to the registration requirements of  
5 the Oklahoma Sex Offenders Registration Act or any  
6 similar act in any other state,

7 f. a person who is residing with a person who has been  
8 previously convicted of a crime listed in the Oklahoma  
9 Child Abuse Reporting and Prevention Act or in Section  
10 582 of Title 57 of the Oklahoma Statutes, or

11 g. a person who is residing with a person who has been  
12 convicted of domestic abuse within the past five (5)  
13 years.

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

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

22 G. For purposes of this section:

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

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

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

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

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

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