

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1965

By: Mulready

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5
6 AS INTRODUCED

7 An Act relating to children; amending Section 114,
8 Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2010,
9 Section 1-4-204), which relates to the placement of
10 children in state custody; modifying adoption
11 placement considerations; amending 10 O.S. 2001,
12 Section 7004-3.2, as renumbered by Section 279,
13 Chapter 233, O.S.L. 2009, and as last amended by
14 Section 4, Chapter 358, O.S.L. 2010 (10A O.S. Supp.
15 2010, Section 1-7-105), which relates to rules and
16 procedures for children in custody; authorizing
17 contact between children and former foster parents;
18 providing exception; and providing an effective date.

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

20 SECTION 1. AMENDATORY Section 114, Chapter 233, O.S.L.
21 2009 (10A O.S. Supp. 2010, Section 1-4-204), is amended to read as
22 follows:

23 Section 1-4-204. A. 1. When awarding custody or determining
24 the placement of a child, a preference shall be given to relatives
and persons who have a kinship relationship with the child. The
Department of Human Services shall make diligent efforts to place
the child with such persons and shall report to the court the
efforts made to secure that placement. In cases where the Indian

1 Child Welfare Act applies, the placement preferences of the act
2 shall be followed.

3 2. When two or more children are siblings, every reasonable
4 attempt shall be made to place the siblings in the same home. In
5 making a permanent placement, siblings shall be placed in the same
6 permanent home or, if the siblings are separated, shall be allowed
7 contact or visitation with each other; provided, however, the best
8 interests of each sibling shall be the standard for determining the
9 appropriate custodian or placement as well as the contact and
10 visitation with the other siblings.

11 3. In determining the appropriate custodian or placement for a
12 child pursuant to subsection A of this section, the court and the
13 Department shall consider, but not be limited to, the following
14 factors:

15 a. the ability of the person being considered to provide
16 safety for the child, including a willingness to
17 cooperate with any restrictions placed on contact
18 between the child and others, and to prevent others
19 from influencing the child in regard to the
20 allegations of the case,

21 b. the ability of the person being considered to support
22 the efforts of the Department to implement the
23 permanent plan for the child,
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- c. the ability of the person being considered to meet the child's physical, emotional, and educational needs, including the child's need to continue in the same school or educational placement,
- d. the person who has the closest existing personal relationship with the child if more than one person requests placement of the child pursuant to this section,
- e. the ability of the person being considered to provide a placement for the child's sibling who is also in need of placement or continuation in substitute care,
- f. the wishes of the parent, the relative, and the child, if appropriate,
- g. the ability of the person being considered to care for the child as long as is necessary and to provide a permanent home if necessary, and
- h. the best interests of the child.

B. 1. The Department of Human Services shall consider placement with a relative without delay and shall identify relatives of the child and notify them of the need for temporary placement and the possibility of the need for a permanent out-of-home placement of the child. The relative search shall be reasonable and comprehensive in scope and may continue until a fit and willing relative is identified.

1 2. The relatives shall be notified of the need to keep the
2 Department informed of their current address in order to receive
3 notice when a permanent out-of-home placement is being sought for
4 the child. A relative who fails to provide a current address may
5 forfeit the right to be considered for the child's permanent out-of-
6 home placement.

7 3. A decision by a relative to not participate in the child's
8 placement planning at the beginning of the case or to cooperate with
9 the Department to expedite procedures for placement of the child in
10 the child's home may affect whether that relative will be considered
11 for permanent placement of the child if the child cannot be safely
12 returned to the home of the child's parent or parents.

13 C. The Department, while assessing the relatives for the
14 possibility of placement, shall be authorized to disclose to the
15 relative, as appropriate, the fact that the child is in custody, the
16 alleged reasons for the custody, and the projected date for the
17 child's return home or other permanent placement as well as any
18 other confidential information deemed necessary and appropriate to
19 secure a suitable placement.

20 D. Following an initial placement with a relative, whenever a
21 new placement of the child is made, consideration for placement
22 shall again be given as described in this section to approved
23 relatives who will fulfill the reunification or permanent plan
24 requirements of the child. The Department shall consider whether

1 the relative has established and maintained a relationship with the
2 child.

3 E. If the child is not placed with a relative who has been
4 considered for placement pursuant to this section, the Department
5 shall advise the court, in writing, the reasons why that relative
6 was denied and the written reasons shall be made a part of the court
7 record.

8 F. The provisions of subsections A through E of this section
9 shall apply to all custody or placement proceedings which concern a
10 child alleged or adjudicated to be deprived including, but not
11 limited to, guardianship and adoption proceedings.

12 G. If the rights of the parents have been terminated with
13 respect to a child who has been placed in a foster home for a
14 substantial period of time, the Department shall give the foster
15 home priority in adoption determinations, provided the foster
16 parents seek adoption of the child.

17 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7004-3.2, as
18 renumbered by Section 279, Chapter 233, O.S.L. 2009, and as last
19 amended by Section 4, Chapter 358, O.S.L. 2010 (10A O.S. Supp. 2010,
20 Section 1-7-105), is amended to read as follows:

21 Section 1-7-105. A. The Department of Human Services shall
22 promulgate written rules, policies, and procedures governing the
23 operation of those facilities operated by or under contract with the
24 Department wherein children may be placed.

1 B. The policies prescribed shall, at a minimum, ensure that:

2 1. A child shall not be punished by physical force, deprivation
3 of nutritious meals or family visits, or solitary confinement;

4 2. A child shall have the opportunity to participate in
5 physical exercise each day;

6 3. A child shall be allowed daily access to showers;

7 4. A child shall be allowed his or her own clothing or
8 individualized clothing which is clean;

9 5. A child shall have constant access to writing materials and
10 may send mail without limitation, censorship, or prior reading, and
11 may receive mail without prior reading, except that mail may be
12 opened in the presence of the child, without being read, to inspect
13 for contraband or if authorized by the court for the protection of
14 the child;

15 6. A child shall have a right to communicate and to visit with
16 his or her family on a regular basis, and to communicate with
17 persons in the community provided the communication or visitation is
18 in the best interests of the child;

19 7. A child shall have a right to communicate and maintain a
20 relationship with prior foster families if the child wishes,
21 provided the communication is in the best interests of the child;

22 8. A child shall have timely access to medical care as needed;
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1 ~~8.~~ 9. A child in the custody or care of the Department shall be
2 provided access to an education including teaching, educational
3 materials, and books;

4 ~~9.~~ 10. A child shall have a right to access to the child's
5 attorney;

6 ~~10.~~ 11. A child shall be afforded a grievance procedure,
7 including an appeal procedure;

8 ~~11.~~ 12. A child's behavioral health needs shall be met,
9 protected, and served through provision of guidance, counseling, and
10 treatment programs, staffed by competent, professionally qualified
11 persons; and

12 ~~12.~~ 13. Use of physical force, when authorized, shall be the
13 least force necessary under the circumstances and shall be permitted
14 only under the following circumstances:

- 15 a. for self-protection,
- 16 b. to separate children who are fighting,
- 17 c. to restrain children in danger of inflicting harm to
18 themselves or others, or
- 19 d. to deter children who are in the process of leaving
20 the facility without authorization.

21 C. Any contract or agreement entered into by the Department for
22 the residential care and treatment of children in the custody of the
23 Department shall provide that the contractor comply with the
24 provisions of subsections A and B of this section.

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SECTION 3. This act shall become effective November 1, 2011.

53-1-6191 SDR 01/11/11