

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2538

By: McCullough

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2011,
8 Section 1-1-102, which relates to legislative intent
9 in the Oklahoma Children's Code; modifying
10 presumption; specifying that termination of parental
11 rights shall be tried before a judge without a jury;
12 amending 10A O.S. 2011, Section 1-4-902, which
13 relates to grounds for termination of parental
14 rights; adding additional ground for termination of
15 parental rights; repealing 10A O.S. 2011, Section 1-
16 4-502, which relates to jury trial for termination of
17 parental rights; providing for codification; and
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-1-102, is
21 amended to read as follows:

22 Section 1-1-102. A. For the purposes of the Oklahoma
23 Children's Code, the Legislature recognizes that:

24 1. Parents have a natural, legal, and moral right, as well as a
duty, to care for and support their children and such rights are
protected by state and federal laws as well as the Constitution. ~~Te~~
~~that end, it is presumed that the best interests of a child are~~

1 ~~ordinarily served by leaving the child in the custody of the~~
2 ~~parents, who are expected to have the strongest bond of love and~~
3 ~~affection and to be best able to provide a child those needed~~
4 ~~qualities that make a child's life safe and secure.~~ However, when a
5 parent abrogates that right, the best interest of the child shall
6 prevail in a proceeding for the termination of parental rights. The
7 standard for determining whether parental rights should be
8 terminated shall be the best interests of the child. Nevertheless,
9 this presumption may be rebutted where there is evidence of abuse
10 and neglect or threat of harm;

11 ~~2.~~ A child has a right to be raised by the mother and father of
12 the child as well as a right to be raised free from physical and
13 emotional abuse or neglect. When it is necessary to remove a child
14 from a parent, the child is entitled to a permanent home and to be
15 placed in the least restrictive environment to meet the needs of the
16 child; and

17 ~~3.~~ 2. Because the state has an interest in its present and
18 future citizens as well as a duty to protect those who, because of
19 age, are unable to protect themselves, it is the policy of this
20 state to provide for the protection of children who have been abused
21 or neglected and who may be further threatened by the conduct of
22 persons responsible for the health, safety, and welfare of such
23 children. To this end, where family circumstances threaten the
24 safety of a child, it is presumed that the state's interest in the

1 welfare of the child takes precedence over the natural right and
2 authority of the parent to the extent that it is necessary to
3 protect the child and assure that the best interests of the child
4 are met.

5 B. It is the intent of the Legislature that the Oklahoma
6 Children's Code provide the foundation and process for state
7 intervention into the parent-child relationship whenever the
8 circumstances of a family threaten the safety of a child and to
9 properly balance the interests of the parties stated herein. To
10 this end, it is the purpose of the laws relating to children alleged
11 or found to be deprived to:

12 1. Intervene in the family only when necessary to protect a
13 child from harm or threatened harm;

14 2. Provide expeditious and timely judicial and agency
15 procedures for the protection of the child;

16 3. Preserve, unify, and strengthen the family ties of the child
17 whenever possible when in the best interests of the child to do so;

18 4. Recognize that the right to family integrity, preservation
19 or reunification is limited by the right of the child to be
20 protected from abuse and neglect;

21 5. Make reasonable efforts to prevent or eliminate the need for
22 the removal of a child from the home and make reasonable efforts to
23 return the child to the home unless otherwise prescribed by the
24 Oklahoma Children's Code;

1 6. Recognize that permanency is in the best interests of the
2 child;

3 7. Ensure that when family rehabilitation and reunification are
4 not possible, the child will be placed in an adoptive home or other
5 permanent living arrangement in a timely fashion; and

6 8. Secure for each child the permanency, care, education, and
7 guidance as will best serve the spiritual, emotional, mental and
8 physical health, safety, and welfare of the child.

9 C. Whenever it is necessary for a child to be placed outside
10 the home pursuant to the Oklahoma Children's Code, it is the intent
11 of the Legislature that:

12 1. Each child shall be assured the care, guidance, and
13 supervision in a permanent home or foster home that will serve the
14 best interests of the child including, but not limited to, the
15 development of the moral, emotional, spiritual, mental, social,
16 educational, and physical well-being of the child;

17 2. When a child is placed in foster care, the foster parent
18 shall be allowed to consider the child as part of the family;

19 3. Whenever possible siblings shall be placed together and when
20 it is not possible efforts shall be made to preserve the
21 relationships through visitation and other methods of communication;
22 and

23 4. Permanent placement is achieved as soon as possible.
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1 D. A foster parent has a recognizable interest in the familial
2 relationship that the foster parent establishes with a foster child
3 and shall therefore be considered an essential participant with
4 regard to decisions related to the care, supervision, guidance,
5 rearing, and other foster care services to the child.

6 E. It is the intent of the Legislature that the paramount
7 consideration in all proceedings within the Oklahoma Children's Code
8 is the best interests of the child.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-4-502.1 of Title 10A , unless
11 there is created a duplication in numbering, reads as follows:

12 Effective November 1, 2012, termination of parental rights
13 petitions shall be tried before a judge, without a jury. There
14 shall be no jury trials for the termination of parental rights.

15 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-902, is
16 amended to read as follows:

17 Section 1-4-902. A. The district attorney shall file a
18 petition or motion for termination of the parent-child relationship
19 and parental rights with respect to a child or shall join in the
20 petition or motion, if filed by the child's attorney, in any of the
21 following circumstances:

22 1. Prior to the end of the ~~fifteenth~~ twelfth month when a child
23 has been placed in foster care by the Department of Human Services
24 for ~~fifteen (15)~~ twelve (12) of the most recent twenty-two (22)

1 months. For purposes of this paragraph, a child shall be considered
2 to have entered foster care on the earlier of:

- 3 a. the date of adjudication as a deprived child, or
- 4 b. the date that is sixty (60) days after the date on
5 which the child is removed from the home;

6 2. No later than sixty (60) days after a child has been
7 judicially determined to be an abandoned infant;

8 3. No later than sixty (60) days after a court has determined
9 that reasonable efforts to reunite are not required due to a felony
10 conviction of a parent who has:

- 11 a. committed the murder of any child or has aided or
12 abetted, attempted, conspired in, or solicited the
13 commission of the murder of any child,
- 14 b. committed voluntary manslaughter of another child of
15 the parent, or has aided or abetted, attempted,
16 conspired in, or solicited the commission of voluntary
17 manslaughter of any child, or
- 18 c. committed a felony assault that has resulted in
19 serious bodily injury to the child or to any child; or

20 4. Immediately upon confirmation that a child has been born
21 testing positive for a controlled dangerous substance; provided,
22 however, a parent may rebut the presumption that termination would
23 be in the best interest of the child by successful participation in
24 a drug treatment program and by not testing positive for any

1 controlled dangerous substance during the time the child welfare
2 case is pending.

3 B. If any of the following conditions exist, the district
4 attorney is not required to file a petition as provided in
5 subsection A of this section for a deprived child:

6 1. At the option of the Department or by order of the court,
7 the child is properly being cared for by a relative;

8 2. The Department has documented a compelling reason for
9 determining that filing a petition to terminate parental rights
10 would not serve the best interests of the child that may include
11 consideration of any of the following circumstances:

12 a. the parents or legal guardians have maintained a
13 relationship with the child and the child would
14 benefit from continuing this relationship,

15 b. the child, who is twelve (12) years or older, objects
16 to the termination of the parent-child legal
17 relationship,

18 c. the foster parents of the child are unable to adopt
19 the child because of exceptional circumstances which
20 do not include an unwillingness to accept legal
21 responsibility for the child but are willing and
22 capable of providing the child with a stable and
23 permanent environment, and the removal of the child
24 from the physical custody of the foster parents would

1 be seriously detrimental to the emotional well-being
2 of the child because the child has substantial
3 psychological ties to the foster parents,

4 d. the child is not capable of achieving stability if
5 placed in a family setting, or

6 e. the child is an unaccompanied, refugee minor and the
7 situation regarding the child involves international
8 legal issues or compelling foreign policy issues; or

9 3. The state has not provided to the family of the child,
10 consistent with the time period in the state case plan, services
11 that the state deems necessary for the safe return of the child to
12 the child's home, if reasonable efforts are required to be made with
13 respect to the child.

14 SECTION 4. REPEALER 10A O.S. 2011, Section 1-4-502, is
15 hereby repealed.

16 SECTION 5. This act shall become effective November 1, 2012.

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18 53-2-7979 SDR 01/15/12
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