

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1407

By: Paddack

4
5
6 AS INTRODUCED

7 An Act relating to deprived children; amending 10A
8 O.S. 2011, Section 1-4-202, which relates to
9 protective or emergency custody; modifying certain
10 time limit; and declaring an emergency.

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

12 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-202, is
13 amended to read as follows:

14 Section 1-4-202. A. 1. The peace officer or an employee of
15 the court shall provide the parent, legal guardian, or custodian of
16 a child immediate written notice of the protective or emergency
17 custody of the child whenever possible.

18 2. The written notice shall:

19 a. inform the parents, legal guardian, or custodian that
20 the child has been removed from the home,

21 b. inform the parent, legal guardian, or custodian of the
22 child that an emergency custody hearing to determine
23 custody of the child will occur within two (2)

1 judicial days from the date the child was removed from
2 the home, and

3 c. contain information about the:

4 (1) emergency custody hearing process including, but
5 not limited to, the date, time and place that the
6 child was taken into protective or emergency
7 custody,

8 (2) nature of the allegation that led to placement of
9 the child into protective or emergency custody,

10 (3) address and telephone number of the local and
11 county law enforcement agencies,

12 (4) phone number of the local child welfare office of
13 the Department of Human Services, and

14 (5) right of the parent, legal guardian or custodian
15 to contact an attorney.

16 3. The written notice shall also contain the following or
17 substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE
18 OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL
19 STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR
20 COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS
21 A PARENT MAY BE TERMINATED."

22 B. 1. Within the next two (2) judicial days following the
23 child being taken into protective or emergency custody, the court
24 shall conduct an emergency custody hearing to determine whether

1 evidence or facts exist that are sufficient to demonstrate to the
2 court there is reason to believe the child is in need of protection
3 due to abuse or neglect, or is in surroundings that are such as to
4 endanger the health, safety or welfare of the child.

5 2. At the emergency custody hearing, the court shall advise the
6 parent, legal guardian or custodian of the child in writing of the
7 procedure which will be followed with regard to determining custody
8 of the child, including, but not limited to:

- 9 a. any right of the parent or legal guardian or custodian
10 to testify and present evidence at court hearings,
- 11 b. the right to be represented by an attorney at court
12 hearings as authorized by law,
- 13 c. the consequences of failure to attend any hearings
14 which may be held, and
- 15 d. the right to appeal and the procedure for appealing
16 the finding of a court on custody issues as authorized
17 by law.

- 18 3. a. At the emergency custody hearing, the court shall:
 - 19 (1) release the child to the child's parent, legal
20 guardian or custodian or other responsible adult
21 without conditions or under such conditions as
22 the court finds reasonably necessary to ensure
23 the health, safety or welfare of the child, or
24

- 1 (2) continue the child in or place the child into
2 emergency custody if continuation of the child in
3 the child's home is contrary to the health,
4 safety or welfare of the child,
- 5 (3) obtain information from the parent, legal
6 guardian or custodian necessary to identify and
7 locate kinship placement resources. If such
8 information indicates that within one (1) year of
9 the emergency custody hearing the child had
10 resided with a grandparent for six (6) months,
11 and that such grandparent was the primary
12 caregiver and provided primary financial support
13 for the child during such time, the court shall
14 provide notice and an opportunity to be heard at
15 future hearings to such grandparent,
- 16 (4) require the Department to provide to any
17 custodian or other person caring for the child
18 information on Department of Human Services
19 programs and services available to the child and
20 provide written notice of any further proceedings
21 to any foster or preadoptive parents or relatives
22 providing care for a child, and
23
24

1 (5) in accordance with the safety or well-being of
2 any child, determine whether reasonable efforts
3 have been made to:

4 (a) place siblings, who have been removed,
5 together in the same foster care,

6 guardianship or adoptive placement, and

7 (b) provide for frequent visitation or other
8 ongoing interaction in the case of siblings
9 who have been removed and who are not placed
10 together.

11 b. If a child has been removed from the custodial parent
12 of the child and the court, in the best interests of
13 the child, is unable to release the child to the
14 custodial parent, the court shall give priority for
15 placement of the child with the noncustodial parent of
16 the child unless such placement would not be in the
17 child's best interests. If the court cannot place the
18 child with the noncustodial parent, custody shall be
19 consistent with the provisions of Section ~~21.1 of this~~
20 ~~title~~ 112.5 of Title 43 of the Oklahoma Statutes. If
21 custody of the child cannot be made pursuant to the
22 provisions of Section ~~21.1 of this title~~ 112.5 of
23 Title 43 of the Oklahoma Statutes, the reason for such
24 determination shall be documented in the court record.

1 C. The court shall order the parent, legal guardian, or
2 custodian to complete an affidavit listing the names, addresses and
3 phone numbers of any parent, whether known or alleged, grandparent,
4 adult aunt, uncle, brother, sister, half-sibling and first cousin of
5 the child and any comments concerning the appropriateness of the
6 child's potential placement with such relative. If none exist, the
7 court shall further require the parents, legal guardian or custodian
8 to list any other adult relatives or persons with whom the child has
9 had a substantial relationship or who may be a suitable placement
10 for the child.

11 D. The Office of the Administrative Director of the Courts
12 shall create an affidavit form and make it available to each court
13 responsible for conducting emergency custody hearings. The
14 affidavit form shall contain a notice to the parent, legal guardian
15 or custodian that failure to identify a parent or relative in a
16 timely manner may result in the child being permanently placed
17 outside of the home of the child's parent or relative. The
18 affidavit form shall also advise the parent, legal guardian or
19 custodian of the penalties associated with perjury and contempt of
20 court. The original completed affidavit shall be filed with the
21 court clerk no later than five (5) days after the hearing or as
22 otherwise directed by the court, and a copy shall be provided to the
23 Department.

24

1 E. The Department shall, within thirty (30) days of a child's
2 removal, exercise due diligence to identify adult relatives. Notice
3 shall be provided by the Department to all grandparents and to such
4 other adult relatives as the court directs. The Department may
5 notify any adult relative for the purpose of assessing whether the
6 relative may be a suitable placement for the child or to maintain
7 the child's connection to kin or culture. The notice, ordered by
8 the court, shall advise the relatives:

9 1. That the child has been or is being removed from the custody
10 of the parent or parents of the child;

11 2. Of the options under applicable law to participate in the
12 care and placement of the child, including any options that may be
13 lost by failing to respond to the notice; and

14 3. Of the requirements to become a foster family home and the
15 additional services and supports available for children placed in
16 such a home.

17 Relatives shall not be notified if the court determines that
18 such notification would not be in the best interests of a child due
19 to past or current family or domestic violence. The Commission for
20 Human Services may promulgate rules in furtherance of the provisions
21 of this section.

22 F. If it is determined by agreement of the office of the
23 district attorney and the Department of Human Services that a child
24 may be safely returned home prior to an emergency custody hearing,

1 the following form or a substantially similar form shall be
2 completed by the office of the district attorney and the Department
3 and filed of record:

4 IN THE DISTRICT COURT OF _____ COUNTY

5 STATE OF OKLAHOMA

6 IN THE MATTER OF:

7 _____

8 ALLEGED DEPRIVED CHILD(REN)

9 MEMORANDUM

10 CHILD WELFARE WORKER:

11 ASSISTANT DISTRICT ATTORNEY:

12 ___ INVESTIGATION REVEALED ALLEGATIONS NOT CONFIRMED

13 ___ SERVICES WERE OFFERED AND ACCEPTED

14 ___ PARENT/CARETAKER HAS TAKEN APPROPRIATE STEPS TO

15 PROTECT CHILD FROM HARM

16 ___ OTHER:

17 NOTES:

18 CHILD(REN) RELEASED TO:

19 _____

20 ASSISTANT DISTRICT ATTORNEY

21 I work for the Department of Human Services and am requesting that
22 the District Attorney's Office release the above-mentioned
23 child(ren) from temporary emergency custody and that a Petition not
24 be filed for court intervention.

1 _____
2 DHS CHILD WELFARE WORKER.

3 G. 1. Except as otherwise provided by this subsection, a
4 petition for a deprived child proceeding shall be filed and a
5 summons issued within ~~five (5)~~ seven (7) judicial days from the date
6 of assumption of custody; provided, however, such time period may be
7 extended a period of time not to exceed fifteen (15) calendar days
8 from the date of assumption of custody of the child if, upon request
9 of the district attorney at the emergency custody hearing, the court
10 determines there are compelling reasons to grant additional time for
11 the filing of the petition for a deprived child proceeding.

12 2. If the petition is not filed as required by this subsection,
13 then the emergency custody order shall expire. The district
14 attorney shall submit for filing in the court record a written
15 record specifying the reasons why the petition was not filed and
16 specifying to whom the child was released.

17 H. If a petition is filed within the time period specified in
18 subsection G of this section, the emergency custody order shall
19 remain in force and effect for not longer than sixty (60) days,
20 except as otherwise provided by this subsection.

21 The emergency custody order shall not be extended beyond sixty
22 (60) days absent a showing that such further extension is necessary
23 to ensure the health, safety or welfare of the child and is in the
24 best interests of the child.

1 I. 1. The court may hold additional hearings at such intervals
2 as may be determined necessary by the court to provide for the
3 health, safety or welfare of the child.

4 2. The parent, legal guardian or custodian of the child, the
5 child's attorney, the district attorney and guardian ad litem if
6 appointed shall be given prior adequate notice of the date, time,
7 place and purpose of any hearing by the court.

8 J. In scheduling hearings, the court shall give priority to
9 proceedings in which a child is in emergency custody.

10 K. 1. An order of the court providing for the removal of a
11 child alleged to be deprived from the home of such child shall not
12 be entered unless the court makes a determination:

13 a. that continuation of the child in the child's home is
14 contrary to the health, safety or welfare of the
15 child, and

16 b. as to whether or not reasonable efforts were made to
17 prevent the need for the removal of the child from the
18 child's home, or

19 c. as to whether or not an absence of efforts to prevent
20 the removal of the child from the child's home is
21 reasonable because the removal is due to an alleged
22 emergency and is for the purpose of providing for the
23 health, safety or welfare of the child, or
24

1 d. that reasonable efforts to provide for the return of
2 the child to the child's home are not required
3 pursuant to Section ~~7003-4.6~~ 1-4-809 of this title;
4 provided, however, upon such determination, the court
5 shall inform the parent that a permanency hearing will
6 be held within thirty (30) days from the
7 determination.

8 2. In all proceedings or actions pursuant to this subsection,
9 the child's health, safety or welfare shall be the paramount
10 concern.

11 SECTION 2. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15
16 53-2-2559 JM 1/18/2012 1:46:02 PM
17
18
19
20
21
22
23
24