

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2667

By: Derby

4  
5  
6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2011,  
8 Sections 1-4-502, 1-4-505 and 1-4-904, as amended by  
9 Section 1, Chapter 404, O.S.L. 2013 (10A O.S. Supp.  
10 2013, Section 1-4-904), which relate to termination  
11 of parental rights; deleting right to jury trial;  
12 directing court to rule on termination of rights;  
13 deleting reference to jury; mandating termination of  
14 parental rights if parent convicted of certain  
15 crimes; and providing an effective date.

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

17 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-502, is  
18 amended to read as follows:

19 Section 1-4-502. A parent entitled to service of summons, the  
20 state or a child shall have the right to demand a trial ~~by jury~~ on  
21 the sole issue of termination of parental rights ~~only~~ in the  
22 following circumstances:

23 1. When the initial petition to determine if a child is  
24 deprived also contains a request for termination of parental rights  
in which case the court shall determine if the child should be

1 adjudicated deprived and if so, the ~~jury~~ court shall determine if  
2 parental rights should be terminated; or

3 2. When, following a hearing in which the child is adjudicated  
4 deprived, a request for termination of parental rights is filed by  
5 the state or the child.

6 The demand for a ~~jury~~ trial shall be granted unless waived, or  
7 the court on its own motion may ~~call a jury to~~ try any termination  
8 of parental rights case. ~~Such jury shall consist of six (6)~~  
9 ~~persons.~~ A party who requests a ~~jury~~ trial and fails to appear for  
10 such trial, after proper notice and without good cause, may be  
11 deemed by the court to have waived the right to be present at such  
12 trial.

13 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-505, is  
14 amended to read as follows:

15 Section 1-4-505. A. This section shall apply only to a  
16 proceeding brought within the purview of the Oklahoma Children's  
17 Code in which a child twelve (12) years of age or younger is alleged  
18 to be deprived, and shall apply only to the statement of that child  
19 or another child witness.

20 B. The recording of an oral statement of the child made before  
21 the proceedings begin is admissible into evidence if:

22 1. The court determines in a hearing ~~conducted outside the~~  
23 ~~presence of the jury~~ that the time, content and totality of  
24 circumstances surrounding the taking of the statement provide

1 sufficient indicia of reliability so as to render it inherently  
2 trustworthy. In determining trustworthiness, the court may  
3 consider, among other things, the following factors: the spontaneity  
4 and consistent repetition of the statement, the mental state of the  
5 declarant, whether the terminology used is unexpected of a child of  
6 similar age or of an incapacitated person, and whether a lack of  
7 motive to fabricate exists; and the child either:

- 8 a. testifies or is available to testify at the  
9 proceedings in open court or through an alternative  
10 method pursuant to the provisions of the Uniform Child  
11 Witness Testimony by Alternative Methods Act or  
12 Section 2611.2 of Title 12 of the Oklahoma Statutes,  
13 or
- 14 b. is unavailable as a witness as defined in Section 2804  
15 of Title 12 of the Oklahoma Statutes. When the child  
16 is unavailable, such statement may be admitted only if  
17 there is corroborative evidence of the act;

18 2. No attorney for any party is present when the statement is  
19 made. However, if appropriate facilities are utilized that allow  
20 observation of the child without the child's knowledge or awareness  
21 in any way, any such attorney may be present as an observer, but not  
22 as a participant, and no such attorney shall have any right to  
23 intervene, object, or otherwise make his or her presence known to  
24

1 the child before, after, or during the making of the statement of  
2 the child;

3 3. The recording is both visual and aural and is recorded on  
4 film or videotape or by other electronic means;

5 4. The recording equipment is capable of making an accurate  
6 recording, the operator of the equipment is competent, and the  
7 recording is accurate and has not been altered;

8 5. The statement is not made in response to questioning  
9 calculated to lead the child to make a particular statement or is  
10 otherwise clearly shown to be the child's statement and not made  
11 solely as a result of a leading or suggestive question;

12 6. Every voice on the recording is identified;

13 7. The person conducting the interview of the child in the  
14 recording is present at the proceeding and is available to testify  
15 or be cross-examined by any party;

16 8. Each party to the proceeding is afforded an opportunity to  
17 view the recording before the recording is offered into evidence;  
18 and

19 9. A copy of a written transcript of the recording transcribed  
20 by a licensed or certified court reporter is available to the  
21 parties.

22 A statement may not be admitted under this subsection unless the  
23 proponent of the statement makes known to the parties an intention  
24 to offer the statement and the particulars of the statement at least

1 ten (10) days in advance of the proceedings to provide the parties  
2 with an opportunity to prepare to answer the statement.

3 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-904, as  
4 amended by Section 1, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013,  
5 Section 1-4-904), is amended to read as follows:

6 Section 1-4-904. A. A court shall not terminate the rights of  
7 a parent to a child unless:

8 1. The child has been adjudicated to be deprived either prior  
9 to or concurrently with a proceeding to terminate parental rights;  
10 and

11 2. Termination of parental rights is in the best interests of  
12 the child.

13 B. The court may terminate the rights of a parent to a child  
14 based upon the following legal grounds:

15 1. Upon the duly acknowledged written consent of a parent, who  
16 voluntarily agrees to termination of parental rights.

17 a. The voluntary consent for termination of parental  
18 rights shall be signed under oath and recorded before  
19 a judge of a court of competent jurisdiction and  
20 accompanied by the judge's certificate that the terms  
21 and consequences of the consent were fully explained  
22 in detail in English and were fully understood by the  
23 parent or that the consent was translated into a  
24 language that the parent understood.

1           b. A voluntary consent for termination of parental rights  
2           is effective when it is signed and may not be revoked  
3           except upon clear and convincing evidence that the  
4           consent was executed by reason of fraud or duress.

5           c. However, notwithstanding the provisions in this  
6           paragraph, in any proceeding for a voluntary  
7           termination of parental rights to an Indian child, the  
8           consent of the parent may be withdrawn for any reason  
9           at any time prior to the entry of a final decree of  
10          termination. Any consent given prior to, or within  
11          ten (10) days after, the birth of an Indian child  
12          shall not be valid;

13          2. A finding that a parent who is entitled to custody of the  
14 child has abandoned the child;

15          3. A finding that the child is an abandoned infant;

16          4. A finding that the parent of a child:

17           a. has voluntarily placed physical custody of the child  
18           with the Department of Human Services or with a child-  
19           placing agency for out-of-home placement,

20           b. has not complied with the placement agreement, and

21           c. has not demonstrated during such period a firm  
22           intention to resume physical custody of the child or  
23           to make permanent legal arrangements for the care of  
24           the child;

1 5. A finding that:

2 a. the parent has failed to correct the condition which  
3 led to the deprived adjudication of the child, and

4 b. the parent has been given at least three (3) months to  
5 correct the condition;

6 6. A finding that:

7 a. the rights of the parent to another child have been  
8 terminated, and

9 b. the conditions that led to the prior termination of  
10 parental rights have not been corrected;

11 7. A finding that a parent who does not have custody of the  
12 child has, for at least six (6) out of the twelve (12) months  
13 immediately preceding the filing of the petition for termination of  
14 parental rights, willfully failed or refused or has neglected to  
15 contribute to the support of the child:

16 a. as specified by an order entered by a court of  
17 competent jurisdiction adjudicating the duty, amount  
18 and manner of support, or

19 b. where an order of child support does not exist,  
20 according to the financial ability of the parent to  
21 contribute to the child's support.

22 Incidental or token support shall not be construed or considered in  
23 establishing whether a parent has maintained or contributed to the  
24 support of the child;

- 1        8. ~~A finding that the parent has been convicted in a court of~~  
2 ~~competent jurisdiction in any state of any of the following acts:~~
- 3        a. ~~permitting a child to participate in pornography,~~
  - 4        b. ~~rape, or rape by instrumentation,~~
  - 5        c. ~~lewd molestation of a child under sixteen (16) years~~  
6        ~~of age,~~
  - 7        d. ~~child abuse or neglect,~~
  - 8        e. ~~enabling child abuse or neglect,~~
  - 9        f. ~~causing the death of a child as a result of the~~  
10       ~~physical or sexual abuse or chronic abuse or chronic~~  
11       ~~neglect of the child,~~
  - 12       g. ~~causing the death of a sibling of the child as a~~  
13       ~~result of the physical or sexual abuse or chronic~~  
14       ~~abuse or chronic neglect of the child's sibling,~~
  - 15       h. ~~murder of any child or aiding or abetting, attempting,~~  
16       ~~conspiring, or soliciting to commit murder of any~~  
17       ~~child,~~
  - 18       i. ~~voluntary manslaughter of any child,~~
  - 19       j. ~~a felony assault that has resulted in serious bodily~~  
20       ~~injury to the child or another child of the parents,~~  
21       ~~or~~
  - 22       k. ~~murder or voluntary manslaughter of the child's parent~~  
23       ~~or aiding or abetting, attempting, conspiring, or~~  
24       ~~soliciting to commit murder of the child's parent;~~

1       ~~9.~~ A finding that the parent has abused or neglected the child  
2 or a sibling of the child or failed to protect the child or a  
3 sibling of the child from abuse or neglect that is heinous or  
4 shocking;

5       ~~10.~~ 9. A finding that the parent has previously abused or  
6 neglected the child or a sibling of the child or failed to protect  
7 the child or a sibling of the child from abuse or neglect and the  
8 child or a sibling of the child has been subjected to subsequent  
9 abuse;

10       ~~11.~~ 10. A finding that the child was conceived as a result of  
11 rape perpetrated by the parent whose rights are sought to be  
12 terminated;

13       ~~12.~~ 11. A finding that the parent whose rights are sought to be  
14 terminated is incarcerated, and the continuation of parental rights  
15 would result in harm to the child based on consideration of the  
16 following factors, among others:

- 17           a. the duration of incarceration and its detrimental
- 18                 effect on the parent/child relationship,
- 19           b. any previous convictions resulting in involuntary
- 20                 confinement in a secure facility,
- 21           c. the parent's history of criminal behavior, including
- 22                 crimes against children,
- 23           d. the age of the child,

24

- 1 e. any evidence of abuse or neglect or failure to protect  
2 from abuse or neglect of the child or siblings of the  
3 child by the parent,  
4 f. the current relationship between the parent and the  
5 child, and  
6 g. the manner in which the parent has exercised parental  
7 rights and duties in the past.

8 Provided, that the incarceration of a parent shall not in and of  
9 itself be sufficient to deprive a parent of parental rights;

10 ~~13.~~ 12. A finding that all of the following exist:

- 11 a. the parent has a diagnosed cognitive disorder, an  
12 extreme physical incapacity, or a medical condition,  
13 including behavioral health which renders the parent  
14 incapable of adequately and appropriately exercising  
15 parental rights, duties, and responsibilities within a  
16 reasonable time considering the age of the child, and  
17 b. allowing the parent to have custody would cause the  
18 child actual harm or harm in the near future.

19 A parent's refusal or pattern of noncompliance with treatment,  
20 therapy, medication, or assistance from outside the home can be used  
21 as evidence that the parent is incapable of adequately and  
22 appropriately exercising parental rights, duties, and  
23 responsibilities.

1 A finding that a parent has a diagnosed cognitive disorder, an  
2 extreme physical incapacity, or a medical condition, including  
3 behavioral health or substance dependency shall not in and of itself  
4 deprive the parent of parental rights;

5 ~~14.~~ 13. A finding that:

6 a. the condition that led to the deprived adjudication  
7 has been the subject of a previous deprived  
8 adjudication of this child or a sibling of this child,  
9 and

10 b. the parent has been given an opportunity to correct  
11 the conditions which led to the determination of the  
12 initial deprived child; and

13 ~~15.~~ 14. A finding that a child has been placed in foster care  
14 by the Department of Human Services for fifteen (15) of the most  
15 recent twenty-two (22) months preceding the filing of the petition  
16 for termination of parental rights. For purposes of this paragraph,  
17 a child shall be considered to have entered foster care on the  
18 earlier of:

19 a. the adjudication date, or

20 b. the date that is sixty (60) days after the date on  
21 which the child is removed from the home.

22 C. The court shall terminate the rights of a parent to a child  
23 upon a finding that the parent, in a court of competent jurisdiction  
24 in any state, has been convicted, whether upon a verdict or plea of

1 guilty or upon a plea of nolo contendere, or received a suspended  
2 sentence or any probationary term, of any of the following acts:

3 1. Permitting a child to participate in pornography;

4 2. Rape, or rape by instrumentation;

5 3. Lewd molestation of a child under sixteen (16) years of age;

6 4. Child abuse or neglect;

7 5. Enabling child abuse or neglect;

8 6. Causing the death of a child as a result of the physical or  
9 sexual abuse or chronic abuse or chronic neglect of the child;

10 7. Causing the death of a sibling of the child as a result of  
11 the physical or sexual abuse or chronic abuse or chronic neglect of  
12 the child's sibling;

13 8. Murder of any child or aiding or abetting, attempting,  
14 conspiring, or soliciting to commit murder of any child;

15 9. Voluntary manslaughter of any child;

16 10. A felony assault that has resulted in serious bodily injury  
17 to the child or another child of the parents; or

18 11. Murder or voluntary manslaughter of the child's parent or  
19 aiding or abetting, attempting, conspiring, or soliciting to commit  
20 murder of the child's parent.

21 D. An order directing the termination of parental rights is a  
22 final appealable order.

23 ~~D.~~ E. The provisions of this section shall not apply to  
24 adoption proceedings and actions to terminate parental rights which

1 do not involve a petition for deprived status of the child. Such  
2 proceedings and actions shall be governed by the Oklahoma Adoption  
3 Code.

4 SECTION 4. This act shall become effective November 1, 2014.

5  
6 54-2-8520 EK 01/13/14  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24