

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3555

By: Lawson

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10A O.S. 2011, Sections 1-4-201, as amended by Section 3, Chapter 355, O.S.L. 2014, 1-4-203, as amended by Section 2, Chapter 173, O.S.L. 2015, 1-4-206 and 1-4-601 (10A O.S. Supp. 2017, Sections 1-4-201 and 1-4-203), which relate to the Oklahoma Children's Code; requiring probable cause for taking custody without a court order; prescribing probable cause for taking custody with a court order; mandating court to use probable cause standard at emergency custody hearing; directing court to advise person of right to certain hearing for release of child; permitting restraining order against alleged abuse perpetrator based on probable cause; requiring probable cause to prevent certain release from emergency custody; creating hearing procedure for release of child in emergency custody; specifying timing for hearing; providing extension for good cause; limiting timing for extension; permitting information regardless of admissibility under the Oklahoma Evidence Code; directing court to release child unless an imminent safety threat exists; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-201, as
2 amended by Section 3, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2017,
3 Section 1-4-201), is amended to read as follows:

4 Section 1-4-201. A. Pursuant to the provisions of this
5 section, a child may be taken into custody prior to the filing of a
6 petition:

7 1. By a peace officer or employee of the court, without a court
8 order if the officer or employee has ~~reasonable suspicion~~ probable
9 cause to believe that:

10 a. the child is in need of immediate protection due to an
11 imminent safety threat,

12 b. the circumstances or surroundings of the child are
13 such that continuation in the child's home or in the
14 care or custody of the parent, legal guardian, or
15 custodian would present an imminent safety threat to
16 the child, or

17 c. the child, including a child with a disability, is
18 unable to communicate effectively about abuse, neglect
19 or other safety threat or is in a vulnerable position
20 due to the inability to communicate effectively and
21 the child is in need of immediate protection due to an
22 imminent safety threat; or

23 2. By an order of the district court issued upon the
24 application of the office of the district attorney. The application

1 presented by the district attorney may be supported by a sworn
2 affidavit which may be based upon information and belief. The
3 application shall state facts sufficient to demonstrate to the court
4 that a continuation of the child in the home or with the caretaker
5 of the child is contrary to the child's welfare and there is
6 ~~reasonable suspicion~~ probable cause to believe that:

- 7 a. the child is in need of immediate protection due to an
8 imminent safety threat,
- 9 b. the circumstances or surroundings of the child are
10 such that continuation in the child's home or in the
11 care or custody of the parent, legal guardian, or
12 custodian would present an imminent safety threat to
13 the child, or
- 14 c. the child, including a child with a disability, is
15 unable to communicate effectively about abuse, neglect
16 or other safety threat or is in a vulnerable position
17 due to the inability to communicate effectively and
18 the child is in need of immediate protection due to an
19 imminent safety threat.

20 The application and order may be verbal and upon being advised by
21 the district attorney or the court of the verbal order, law
22 enforcement shall act on such order. If verbal, the district
23 attorney shall submit a written application and proposed order to
24 the district court within one (1) judicial day from the issuance of

1 the verbal order. Upon approval, the application and order shall be
2 filed with the court clerk; or

3 3. By order of the district court when the child is in need of
4 medical or behavioral health treatment in order to protect the
5 health, safety, or welfare of the child and the parent, legal
6 guardian, or custodian of the child is unwilling or unavailable to
7 consent to such medical or behavioral health treatment or other
8 action, the court shall specifically include in the emergency order
9 authorization for such medical or behavioral health evaluation or
10 treatment as it deems necessary.

11 B. 1. By January 1, 2010, the Department in consultation with
12 law enforcement and the district courts shall develop and implement
13 a system for joint response when a child is taken into protective
14 custody by a peace officer pursuant to paragraph 1 of subsection A
15 of this section. The system shall include:

- 16 a. designation of persons to serve as contact points for
17 peace officers, including at least one backup contact
18 for each initial contact point,
- 19 b. a protocol for conducting a safety evaluation at the
20 scene where protective custody is assumed to determine
21 whether the child faces an imminent safety threat and,
22 if so, whether the child can be protected through
23 placement with relatives or others without the
24 Department assuming emergency custody,

- c. the development of reception centers for accepting protective custody of children from peace officers when the Department is unable to respond at the scene within a reasonable time period,
- d. a protocol for conducting a safety evaluation at the reception center within twenty-three (23) hours of the assumption of protective custody of a child to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody, and
- e. a protocol, when the child cannot safely be left in the home, for transporting a child to the home of a relative, kinship care home, an emergency foster care home, a shelter, or any other site at which the Department believes the child can be protected, provided that the Department shall utilize a shelter only when the home of a relative, kinship care home, or emergency foster care home is unavailable or inappropriate.

2. Beginning January 1, 2010, no child taken into protective custody under paragraph 1 of subsection A of this section shall be considered to be in the emergency custody of the Department until the Department has completed a safety evaluation and has concluded

1 that the child faces an imminent safety threat and the court has
2 issued an order for emergency custody.

3 3. If the safety evaluation performed by the Department of a
4 child taken into protective custody under paragraph 1 of subsection
5 A of this section indicates that the child does not face an imminent
6 safety threat, the Department shall restore the child to the custody
7 and control of the parent, legal guardian, or custodian of the
8 child.

9 C. When an order issued by the district court pursuant to
10 subsection A of this section places the child in the emergency
11 custody of the Department of Human Services pending further hearing
12 specified by Section 1-4-203 of this title, an employee of the
13 Department may execute such order and physically take the child into
14 custody in the following limited circumstance:

15 1. The child is located in a hospital, school, or day care
16 facility; and

17 2. It is believed that assumption of the custody of the child
18 from the facility can occur without risk to the child or the
19 employee of the Department.

20 Otherwise, the order shall be executed and the child taken into
21 custody by a peace officer or employee of the court.

22 D. The court shall not enter a prepetition emergency custody
23 order removing a child from the home of the child unless the court
24 makes a determination:

1 1. That an imminent safety threat exists and continuation in
2 the home of the child is contrary to the welfare of the child; and

3 2. Whether reasonable efforts have been made to prevent the
4 removal of the child from the child's home; or

5 3. An absence of efforts to prevent the removal of the child
6 from the home of the child is reasonable because the removal is due
7 to an emergency and is for the purpose of providing for the safety
8 and welfare of the child.

9 E. Whenever a child is taken into custody pursuant to this
10 section:

11 1. The child may be taken to a kinship care home or an
12 emergency foster care home designated by the Department, or if no
13 such home is available, to a children's shelter located within the
14 county where protective or emergency custody is assumed or, if there
15 is no children's shelter within the county, to a children's shelter
16 designated by the court;

17 2. Unless otherwise provided by administrative order entered
18 pursuant to subsection F of this section, the child may be taken
19 before a judge of the district court or the court may be contacted
20 verbally for the purpose of obtaining an order for emergency
21 custody. The court may place the child in the emergency custody of
22 the Department or some other suitable person or entity pending
23 further hearing specified by Section 1-4-203 of this title;

1 3. The child may be taken directly to or retained in a health
2 care facility for medical treatment, when the child is in need of
3 emergency medical treatment to maintain the child's health, or as
4 otherwise directed by the court; or

5 4. The child may be taken directly to or retained in a
6 behavioral health treatment facility for evaluation or inpatient
7 treatment, in accordance with the provisions of the Inpatient Mental
8 Health and Substance Abuse Treatment of Minors Act, when the child
9 is in need of behavioral health care to preserve the child's health,
10 or as otherwise directed by the court; and

11 5. Unless otherwise provided by administrative order entered
12 pursuant to subsection F of this section, the district court of the
13 county where the custody is assumed shall be immediately notified,
14 verbally or in writing, that the child has been taken into custody.
15 If notification is verbal, written notification shall be sent to the
16 district court within one (1) judicial day of such verbal
17 notification.

18 F. The court may provide, in an administrative order issued
19 pursuant to this section, for the disposition of children taken into
20 custody and notification of the assumption of such custody.

21 1. Such order or rule shall be consistent with the provisions
22 of subsection E of this section and may include a process for
23 release of a child prior to an emergency custody hearing. The
24 administrative order shall not include a provision to modify

1 protective custody of a child to emergency custody of the Department
2 upon admission of a child to a shelter; and

3 2. The administrative order may require joint training of peace
4 officers and Department staff deemed necessary by the court to carry
5 out the provisions of the administrative order.

6 G. No child taken into custody pursuant to this section shall
7 be confined in any jail, adult lockup, or adult or juvenile
8 detention facility.

9 H. When a determination is made by the Department that there is
10 a significant risk of abuse or neglect, but there is not an imminent
11 safety threat to the child, the Department may recommend a court-
12 supervised and Department-monitored in-home placement. The
13 Department shall assist the family in obtaining the services
14 necessary to maintain the in-home care and correct the conditions
15 leading to the risk determination.

16 I. Any peace officer, employee of the court, or employee of the
17 Department is authorized to transport a child when acting pursuant
18 to this section. Such persons and any other person acting under the
19 direction of the court, who in good faith transports any child or
20 carries out duties pursuant to this section, shall be immune from
21 civil or criminal liability that may result by reason of such act.
22 For purposes of any proceedings, civil or criminal, the good faith
23 of any such person shall be presumed. This provision shall not
24

1 apply to damage or injury caused by the willful, wanton or gross
2 negligence or misconduct of a person.

3 J. A parent or person responsible for the child who is arrested
4 on a charge or warrant other than child abuse or neglect or an act
5 of child endangerment may designate another person to take physical
6 custody of the child. Upon this request, the peace officer may
7 release the child to the physical custody of the designated person.

8 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-203, as
9 amended by Section 2, Chapter 173, O.S.L. 2015 (10A O.S. Supp. 2017,
10 Section 1-4-203), is amended to read as follows:

11 Section 1-4-203. A. Within the next two (2) judicial days
12 following the child being taken into protective or emergency
13 custody, the court shall conduct an emergency custody hearing. At
14 the hearing, information may be provided to the court in the form of
15 oral or written reports, affidavits or testimony. Any information
16 having probative value may be received by the court regardless of
17 its admissibility under the Oklahoma Evidence Code. At the hearing
18 the court shall:

19 1. Determine whether facts exist that are sufficient to
20 demonstrate to the court there is ~~reasonable suspicion~~ probable
21 cause to believe that the child is in need of immediate protection
22 due to abuse or neglect, or that the circumstances or surroundings
23 of the child are such that continuation of the child in the child's
24

1 home or in the care or custody of the parent, legal guardian, or
2 custodian would present an imminent danger to the child;

3 2. Advise the parent, legal guardian, or custodian of the child
4 in writing of the following:

- 5 a. any right of the parent, legal guardian, or custodian
6 to testify and present evidence at court hearings,
- 7 b. the right to be represented by an attorney at court
8 hearings,
- 9 c. the consequences of failure to attend any hearings
10 which may be held, ~~and~~
- 11 d. the right to appeal and procedure for appealing an
12 order of the court, and
- 13 e. the right to a hearing at any time prior to
14 disposition seeking release of the child from
15 emergency custody;

16 3. Determine custody of the child and order one of the
17 following:

- 18 a. release of the child to the custody of the child's
19 parent, legal guardian, or custodian from whom the
20 child was removed under any conditions the court finds
21 reasonably necessary to protect the health, safety, or
22 welfare of the child, or
- 23 b. placement of the child in the custody of a responsible
24 adult or licensed child-placing agency under any

1 conditions the court finds reasonably necessary to
2 protect the health, safety, or welfare of the child,
3 or

4 c. whether to continue the child in or to place the child
5 into the emergency custody of the Department of Human
6 Services;

7 4. Order the parent, legal guardian, or custodian to complete
8 an affidavit listing the names, addresses, and phone numbers of any
9 parent, whether known or alleged, grandparent, aunt, uncle, brother,
10 sister, half-sibling, and first cousin and any comments concerning
11 the appropriateness of the potential placement of the child with the
12 relative. If no such relative exists, the court shall require the
13 parent, legal guardian, or custodian to list any other relatives or
14 persons with whom the child has had a substantial relationship or
15 who may be a suitable placement for the child;

16 5. Direct the parent, legal guardian, or custodian to furnish
17 the Department with a copy of the child's birth certificate within
18 fifteen (15) days from the hearing if a petition is filed, unless
19 otherwise extended by the court; and

20 6. In accordance with the safety or well-being of any child,
21 determine whether reasonable efforts have been made to:

22 a. place siblings, who have been removed, together in the
23 same foster care, guardianship, or adoptive placement,
24 and

1 b. provide for frequent visitation or other ongoing
2 interaction in the case of siblings who have been
3 removed and who are not placed together.

4 B. The office of the State Court Administrator shall create an
5 affidavit form and make it available to each court responsible for
6 conducting emergency custody hearings. The affidavit form shall
7 contain a notice to the parent, legal guardian, or custodian that
8 failure to identify a parent or relative in a timely manner may
9 result in the child being permanently placed outside of the home of
10 the child's parent or relative. The affidavit form shall also
11 advise the parent, legal guardian, or custodian of the penalties
12 associated with perjury and contempt of court. The original
13 completed affidavit shall be filed with the court clerk no later
14 than five (5) days after the hearing or as otherwise directed by the
15 court and a copy shall be provided to the Department.

16 C. 1. The Department shall, within thirty (30) days of the
17 removal of a child, exercise due diligence to identify relatives.
18 Notice shall be provided by the Department to the following adult
19 relatives: all grandparents, all parents of a sibling of the child,
20 where the parent has legal custody of the sibling, and other adult
21 relatives of the child, including relatives suggested by the
22 parents, as the court directs. The notice shall advise the
23 relatives:
24

- a. the child has been or is being removed from the custody of the parent or parents of the child,
- b. of the options under applicable law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, and
- c. of the requirements to become a foster family home and the additional services and supports available for children placed in the home.

2. Relatives shall not be notified if notification would not be in the best interests of a child due to past or current family or domestic violence. The Department may promulgate rules in furtherance of the provisions of this subsection.

SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-206, is amended to read as follows:

Section 1-4-206. A. 1. At the emergency custody hearing or when a petition has been filed alleging that a child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides. The court may issue a restraining order only if the court finds that:

1 a. there is a ~~reasonable suspicion~~ probable cause to
2 believe that abuse occurred and that the person to be
3 restrained committed the abuse, and

4 b. the order is in the best interest of the child.

5 2. The court may also enter other appropriate orders including,
6 but not limited to, orders that control contact between the alleged
7 abuser, other children in the home, and any other person.

8 3. The court shall include in an order entered under this
9 subsection the following information about the person to be
10 restrained to the extent known by the court at the time the order is
11 entered:

12 a. name,

13 b. address,

14 c. age and birth date,

15 d. race,

16 e. sex,

17 f. height and weight,

18 g. color of hair and eyes, and

19 h. any other identifying features such as tattoos.

20 4. The court may include in the order a provision that a peace
21 officer accompany the restrained person to the household when it is
22 necessary for the restrained person to remove personal property.

23 B. If the court enters an order under this section:
24

1 1. The clerk of the court shall provide without charge the
2 number of certified true copies of the order and petition, if
3 available, necessary to effect service and shall deliver the same to
4 the sheriff or other person qualified to serve the order for service
5 upon the person to be restrained; and

6 2. The sheriff or other person qualified to serve the order
7 shall serve the person to be restrained personally unless that
8 person is present at the hearing. After accepting the order, if the
9 sheriff or other person cannot complete service within ten (10)
10 days, the sheriff or other person shall file a return to the clerk
11 of the court showing that service was not completed and the reason
12 for the noncompletion.

13 C. Within thirty (30) days after an order is served under this
14 section, the restrained person may file a written request with the
15 court and receive a court hearing on any portion of the order. If
16 the restrained person requests a hearing under this subsection:

17 1. The court shall notify the parties and the restrained person
18 of the date and time of the hearing; and

19 2. The court shall hold a hearing within twenty-one (21) days
20 after the request for hearing is filed with the court and at the
21 conclusion of the hearing may cancel or modify the order.

22 D. 1. Within twenty-four (24) hours of the return of service
23 of the restraining order, the clerk of the issuing court shall send
24 certified copies thereof to all appropriate law enforcement agencies

1 designated by the court. A certified copy of any extension,
2 modification, vacation, cancellation, or consent agreement
3 concerning the restraining order shall be sent by the clerk of the
4 issuing court to those law enforcement agencies receiving the
5 original orders pursuant to this section and to any law enforcement
6 agencies designated by the court.

7 2. Any law enforcement agency receiving copies of the documents
8 listed in paragraph 1 of this subsection shall be required to ensure
9 that other law enforcement agencies have access twenty-four (24)
10 hours a day to the information contained in the documents which may
11 include entry of information about the restraining order in the
12 National Crime Information Center database.

13 E. A restraining order issued pursuant to this section remains
14 in effect for a period of one (1) year or until the order is sooner
15 modified, amended, or terminated by court order.

16 F. A court that issued a restraining order under this section
17 may renew the order for a period of up to one (1) year if the court
18 finds that there is probable cause to believe the renewal is in the
19 best interest of the child. The court may renew the order on motion
20 by the state or the child's attorney alleging facts supporting the
21 required finding. If the renewal order is granted, subsections B
22 and C of this section apply.

23 G. If a restraining order issued pursuant to this section is
24 terminated before its expiration date, the clerk of the court shall

1 promptly deliver a true copy of the termination order to the
2 sheriff. The sheriff shall promptly remove the original order from
3 the National Crime Information Center database.

4 H. Any person who has been served with the restraining order
5 and is in violation of the restraining order, upon conviction, shall
6 be guilty of a misdemeanor and shall be punished by a fine of not
7 more than One Thousand Dollars (\$1,000.00) or by a term of
8 imprisonment in the county jail of not more than one (1) year, or
9 both such fine and imprisonment.

10 SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-4-601, is
11 amended to read as follows:

12 Section 1-4-601. A. The court shall hold an adjudication
13 hearing following the filing of a petition alleging that a child is
14 deprived. The hearing shall be held not more than ninety (90)
15 calendar days following the filing of the petition. The child and
16 the child's parents, guardian, or other legal custodian shall be
17 entitled to not less than twenty (20) days' prior notice of the
18 hearing.

19 B. 1. The child shall be released from emergency custody in
20 the event the adjudication hearing is delayed beyond ninety (90)
21 days from the date the petition is filed unless the court issues a
22 written order with findings of fact supporting a determination that:

- 23 a. there exists ~~reasonable suspicion~~ probable cause to
24 believe that the health, safety, or welfare of the

1 child would be in imminent danger if the child were
2 returned to the home, and

3 b. there exists either an exceptional circumstance to
4 support the continuance of the child in emergency
5 custody or the parties and the guardian ad litem, if
6 any, agree to such continuance.

7 2. If the adjudicatory hearing is delayed pursuant to this
8 subsection, the emergency custody order shall expire unless the
9 hearing on the merits of the petition is held within one hundred
10 eighty (180) days after the actual removal of the child.

11 C. The release of a child from emergency custody due to the
12 failure of an adjudication hearing being held within the time frame
13 prescribed by this section shall not deprive the court of
14 jurisdiction over the child and the parties or authority to enter
15 temporary orders the court deems necessary to provide for the
16 health, safety, and welfare of the child pending the hearing on the
17 petition.

18 D. At the adjudication hearing, if the court finds that it is
19 in the best interest of the child, the court shall:

20 1. Accept a stipulation by the child's parent, guardian, or
21 other legal custodian that the facts alleged in the petition are
22 true and correct;

23 2. Accept a stipulation by the child's parent, guardian, or
24 other legal custodian that if the state presented its evidence

1 supporting the truth of the factual allegations in the petition to a
2 court of competent jurisdiction, such evidence would be sufficient
3 to meet the state's burden of proving by a preponderance of the
4 evidence that the factual allegations are true and correct; or

5 3. Conduct a nonjury trial to determine whether the state has
6 met its burden of proving by a preponderance of the evidence that
7 the factual allegations in the petition are true and correct.

8 E. 1. A decision determining a child to be deprived in a
9 nonjury trial shall be based on sworn testimony.

10 2. The child, as a party to the proceeding, shall be given the
11 opportunity to cross-examine witnesses and to present a case in
12 chief if desired.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-4-203.1 of Title 10A, unless
15 there is created a duplication in numbering, reads as follows:

16 As provided in subparagraph e of paragraph 2 of subsection A of
17 Section 1-4-203 of Title 10A of the Oklahoma Statutes, upon the
18 application of the parent or other person legally responsible for
19 the care of a child temporarily removed as provided in Section 1-4-
20 203 of Title 10A of the Oklahoma Statutes or upon the application of
21 the attorney for the child for an order releasing the child, the
22 court shall hold a hearing to determine whether the child should be
23 released from emergency custody. The hearing shall be held within
24 three (3) judicial days of the application unless extended by the

1 court for good cause shown. An extension for the hearing shall be
2 for no more than seven (7) judicial days. Any information with
3 probative value may be received by the court regardless of its
4 admissibility under the Oklahoma Evidence Code. The court shall
5 grant the application at the hearing, unless it finds that releasing
6 the child would present an imminent safety threat to the child.

7 SECTION 6. This act shall become effective November 1, 2018.

8
9 56-2-10062 LRB 02/28/18
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24