

1 **SENATE FLOOR VERSION**

2 April 9, 2018

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2858

By: West (Tammy) and Lawson of
the House

and

Pugh of the Senate

6
7
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9 COMMITTEE SUBSTITUTE

10 [children - Oklahoma Children's Code - requiring
11 notification about voluntary adoption placement when
12 a child is taken into emergency custody - effective
13 date]

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

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

18 Section 1-4-203. A. Within the next two (2) judicial days
19 following the child being taken into protective or emergency
20 custody, the court shall conduct an emergency custody hearing. At
21 the hearing, information may be provided to the court in the form of
22 oral or written reports, affidavits or testimony. Any information
23 having probative value may be received by the court regardless of
24

1 its admissibility under the Oklahoma Evidence Code. At the hearing
2 the court shall:

3 1. Determine whether facts exist that are sufficient to
4 demonstrate to the court there is reasonable suspicion that the
5 child is in need of immediate protection due to abuse or neglect, or
6 that the circumstances or surroundings of the child are such that
7 continuation of the child in the child's home or in the care or
8 custody of the parent, legal guardian, or custodian would present an
9 imminent danger to the child;

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

- 12 a. any right of the parent, legal guardian, or custodian
- 13 to testify and present evidence at court hearings,
- 14 b. the right to be represented by an attorney at court
- 15 hearings,
- 16 c. the consequences of failure to attend any hearings
- 17 which may be held, ~~and~~
- 18 d. the right to appeal and procedure for appealing an
- 19 order of the court, and
- 20 e. the availability of a voluntary placement of the child
- 21 with a licensed child-placing agency;

22 3. Determine custody of the child and order one of the
23 following:
24

- 1 a. release of the child to the custody of the child's
2 parent, legal guardian, or custodian from whom the
3 child was removed under any conditions the court finds
4 reasonably necessary to protect the health, safety, or
5 welfare of the child, or
6 b. placement of the child in the custody of a responsible
7 adult or licensed child-placing agency under any
8 conditions the court finds reasonably necessary to
9 protect the health, safety, or welfare of the child,
10 or
11 c. whether to continue the child in or to place the child
12 into the emergency custody of the Department of Human
13 Services;

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

23 5. Direct the parent, legal guardian, or custodian to furnish
24 the Department with a copy of the child's birth certificate within

1 fifteen (15) days from the hearing if a petition is filed, unless
2 otherwise extended by the court; ~~and~~

3 6. No sooner than thirty (30) judicial days after the emergency
4 custody hearing, if the parent wishes to relinquish his or her
5 parental rights and proceed with a voluntary adoption and the court
6 agrees, the parent may execute a consent to the voluntary adoption
7 placement of the child with a child-placing agency; and

8 7. In accordance with the safety or well-being of any child,
9 determine whether reasonable efforts have been made to:

- 10 a. place siblings, who have been removed, together in the
11 same foster care, guardianship, or adoptive placement,
12 and
13 b. provide for frequent visitation or other ongoing
14 interaction in the case of siblings who have been
15 removed and who are not placed together.

16 B. The office of the State Court Administrator shall create an
17 affidavit form and make it available to each court responsible for
18 conducting emergency custody hearings. The affidavit form shall
19 contain a notice to the parent, legal guardian, or custodian that
20 failure to identify a parent or relative in a timely manner may
21 result in the child being permanently placed outside of the home of
22 the child's parent or relative. The affidavit form shall also
23 advise the parent, legal guardian, or custodian of the penalties
24 associated with perjury and contempt of court. The original

1 completed affidavit shall be filed with the court clerk no later
2 than five (5) days after the hearing or as otherwise directed by the
3 court and a copy shall be provided to the Department.

4 C. 1. The Department shall, within thirty (30) days of the
5 removal of a child, exercise due diligence to identify relatives.
6 Notice shall be provided by the Department to the following adult
7 relatives: all grandparents, all parents of a sibling of the child,
8 where the parent has legal custody of the sibling, and other adult
9 relatives of the child, including relatives suggested by the
10 parents, as the court directs. The notice shall advise the
11 relatives:

12 a. the child has been or is being removed from the
13 custody of the parent or parents of the child,

14 b. of the options under applicable law to participate in
15 the care and placement of the child, including any
16 options that may be lost by failing to respond to the
17 notice, and

18 c. of the requirements to become a foster family home and
19 the additional services and supports available for
20 children placed in the home.

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

SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-204, as last amended by Section 3, Chapter 342, O.S.L. 2017 (10A O.S. Supp. 2017, Section 1-4-204), is amended to read as follows:

Section 1-4-204. A. 1. When awarding custody or determining the placement of a child, a preference shall be given to relatives and persons who have a kinship relationship with the child unless the parent has chosen to make a voluntary adoption placement with a licensed child-placing agency. 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 Child Welfare Act applies, the placement preferences of the act shall be followed.

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

3. Siblings may be separated if the court and the Department find that placement of siblings together would be contrary to the safety or well-being of any of the siblings, and:

- a. one sibling has resided in a foster family home for six (6) or more months and has established a relationship with the foster family,
- b. the siblings have never resided in the same home together,
- c. there is no established relationship between the siblings, ~~or~~
- d. the parent has chosen to make a voluntary adoption placement through a licensed child-placing agency, or
- e. it is in the best interests of the child to remain in the current foster family home placement.

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

1. The ability of the person being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and to prevent others from influencing the child in regard to the allegations of the case;

2. The ability of the person being considered to support the efforts of the Department to implement the permanent plan for the child;

1 3. The ability of the person being considered to meet the
2 child's physical, emotional, and educational needs, including the
3 child's need to continue in the same school or educational
4 placement;

5 4. The person who has the closest existing personal
6 relationship with the child if more than one person requests
7 placement of the child pursuant to this section;

8 5. The ability of the person being considered to provide a
9 placement for the child's sibling who is also in need of placement
10 or continuation in substitute care;

11 6. The wishes of the parent, the relative, and the child, if
12 appropriate;

13 7. The ability of the person being considered to care for the
14 child as long as is necessary and to provide a permanent home if
15 necessary; and

16 8. The best interests of the child.

17 C. 1. The Department of Human Services shall consider
18 placement with a relative without delay and shall identify relatives
19 of the child and notify them of the need for temporary placement and
20 the possibility of the need for a permanent out-of-home placement of
21 the child. The relative search shall be reasonable and
22 comprehensive in scope and may continue until a fit and willing
23 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 D. 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 E. 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 F. 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 G. If the parent has consented to a voluntary adoption and the
9 court, after input from the Department, a review of the child's
10 social and medical history and, when appropriate, input from the
11 child, is satisfied the voluntary adoption is in the child's best
12 interest, the court may:

13 1. Direct the licensed child-placing agency that will be
14 receiving the consent to adoption to provide a copy of the
15 preliminary home study of the prospective adoptive parents to the
16 court. The preliminary home study shall be kept confidential in the
17 court file and in the Department file. Unless the court has
18 concerns that the preliminary home study is not adequate to
19 determine the best interests of the child, the preliminary home
20 study provided by the licensed child-placing agency shall be
21 sufficient and no additional home study shall be performed by the
22 Department;

23 2. If the court determines that the prospective adoptive
24 parents are properly qualified to adopt the child and the adoption

1 appears to be in the best interests of the child, the court shall
2 immediately order the transfer of custody of the child to the
3 licensed child-placing agency. The licensed child-placing agency
4 shall provide the court and the Department certified copies of the
5 consent or relinquishment and termination proceedings of the parent
6 within thirty (30) calendar days of the termination hearing.

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

11 SECTION 3. This act shall become effective November 1, 2018.

12 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
13 April 9, 2018 - DO PASS AS AMENDED
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