

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2858

By: West (Tammy)

AS INTRODUCED

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 and Section 1-4-204, as last amended by Section 3, Chapter 342, O.S.L. 2017 (10A O.S. Supp. 2017, Sections 1-4-201, 1-4-203 and 1-4-204), which relate to the Oklahoma Children's Code; requiring notification about voluntary adoption placement when a child is taken into emergency custody; prescribing written notification in emergency custody order; mandating execution of consent for placement with a licensed child-placing agency; declaring consent to be valid, binding and enforceable by the court; directing court to advise parent in writing of right to make certain placement; excepting affidavit requirement for certain parent; requiring preliminary home study of prospective adoptive parents; describing preliminary home study procedures; directing court to transfer custody of child in certain cases; mandating agency to provide certified copies of specified documents; authorizing closing of files; modifying placement preferences for voluntary adoption placements; 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 that:

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

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

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

22 2. By an order of the district court issued upon the
23 application of the office of the district attorney. The application
24 presented by the district attorney may be supported by a sworn

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

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

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

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 6. The parent of the child shall be notified by the court and
19 the Department of Human Services of the availability of voluntary
20 adoption placement of the child with a licensed child-placing
21 agency. The emergency custody order shall contain written
22 notification of the availability of voluntary adoption placement;
23 and
24

1 7. If the parent chooses to consent to the voluntary adoption
2 placement provided in paragraph 6 of this subsection, the parent
3 shall execute a consent for placement of the child with a licensed
4 child-placing agency as soon as reasonably possible. The consent to
5 voluntary adoption placement shall be valid, binding and enforceable
6 by the court.

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

10 1. Such order or rule shall be consistent with the provisions
11 of subsection E of this section and may include a process for
12 release of a child prior to an emergency custody hearing. The
13 administrative order shall not include a provision to modify
14 protective custody of a child to emergency custody of the Department
15 upon admission of a child to a shelter; and

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

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

22 H. When a determination is made by the Department that there is
23 a significant risk of abuse or neglect, but there is not an imminent
24 safety threat to the child, the Department may recommend a court-

1 supervised and Department-monitored in-home placement. The
2 Department shall assist the family in obtaining the services
3 necessary to maintain the in-home care and correct the conditions
4 leading to the risk determination.

5 I. Any peace officer, employee of the court, or employee of the
6 Department is authorized to transport a child when acting pursuant
7 to this section. Such persons and any other person acting under the
8 direction of the court, who in good faith transports any child or
9 carries out duties pursuant to this section, shall be immune from
10 civil or criminal liability that may result by reason of such act.
11 For purposes of any proceedings, civil or criminal, the good faith
12 of any such person shall be presumed. This provision shall not
13 apply to damage or injury caused by the willful, wanton or gross
14 negligence or misconduct of a person.

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

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

23 Section 1-4-203. A. Within the next two (2) judicial days
24 following the child being taken into protective or emergency

1 custody, the court shall conduct an emergency custody hearing. At
2 the hearing, information may be provided to the court in the form of
3 oral or written reports, affidavits or testimony. Any information
4 having probative value may be received by the court regardless of
5 its admissibility under the Oklahoma Evidence Code. At the hearing
6 the court shall:

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

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

- 16 a. any right of the parent, legal guardian, or custodian
17 to testify and present evidence at court hearings,
18 b. the right to be represented by an attorney at court
19 hearings,
20 c. the consequences of failure to attend any hearings
21 which may be held, ~~and~~
22 d. the right to appeal and procedure for appealing an
23 order of the court, and
24

1 e. the right to make a voluntary adoption placement of
2 the child with a licensed child-placing agency;

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

5 a. release of the child to the custody of the child's
6 parent, legal guardian, or custodian from whom the
7 child was removed under any conditions the court finds
8 reasonably necessary to protect the health, safety, or
9 welfare of the child, or

10 b. placement of the child in the custody of a responsible
11 adult or licensed child-placing agency under any
12 conditions the court finds reasonably necessary to
13 protect the health, safety, or welfare of the child,
14 or

15 c. whether to continue the child in or to place the child
16 into the emergency custody of the Department of Human
17 Services;

18 4. ~~Order~~ Unless the parent has chosen to make a voluntary
19 adoption placement with a licensed child-placing agency, order the
20 parent, legal guardian, or custodian to complete an affidavit
21 listing the names, addresses, and phone numbers of any parent,
22 whether known or alleged, grandparent, aunt, uncle, brother, sister,
23 half-sibling, and first cousin and any comments concerning the
24 appropriateness of the potential placement of the child with the

1 relative. If no such relative exists, the court shall require the
2 parent, legal guardian, or custodian to list any other relatives or
3 persons with whom the child has had a substantial relationship or
4 who may be a suitable placement for the child;

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

9 6. Direct the parent who chooses to make a voluntary adoption
10 placement to provide a copy of the preliminary home study of the
11 prospective adoptive parents from the licensed child-placing agency.
12 The preliminary home study shall be kept confidential in the court
13 file and in the Department file. Unless the court has concerns that
14 the preliminary home study is not adequate to determine the best
15 interests of the child, the preliminary home study provided by the
16 licensed child-placing agency shall be sufficient and no additional
17 home study shall be performed by the Department. If the court
18 determines that the prospective adoptive parents are properly
19 qualified to adopt the child and the adoption appears to be in the
20 best interests of the child, the court shall immediately order the
21 transfer of custody of the child to the licensed child-placing
22 agency. The licensed child-placing agency shall provide the court
23 and the Department certified copies of the consent and termination
24 proceedings of the parent within thirty (30) days of the termination

1 hearing. Upon receipt of documents the Department and the court may
2 close their files; and

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

5 a. place siblings, who have been removed, together in the
6 same foster care, guardianship, or adoptive placement,
7 and

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

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

23 C. 1. The Department shall, within thirty (30) days of the
24 removal of a child, exercise due diligence to identify relatives.

1 Notice shall be provided by the Department to the following adult
2 relatives: all grandparents, all parents of a sibling of the child,
3 where the parent has legal custody of the sibling, and other adult
4 relatives of the child, including relatives suggested by the
5 parents, as the court directs. The notice shall advise the
6 relatives:

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

9 b. of the options under applicable law to participate in
10 the care and placement of the child, including any
11 options that may be lost by failing to respond to the
12 notice, and

13 c. of the requirements to become a foster family home and
14 the additional services and supports available for
15 children placed in the home.

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

20 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-204, as
21 last amended by Section 3, Chapter 342, O.S.L. 2017 (10A O.S. Supp.
22 2017, Section 1-4-204), is amended to read as follows:

23 Section 1-4-204. A. 1. When awarding custody or determining
24 the placement of a child, a preference shall be given to relatives

1 and persons who have a kinship relationship with the child unless
2 the parent has chosen to make a voluntary adoption placement with a
3 licensed child-placing agency. The Department of Human Services
4 shall make diligent efforts to place the child with such persons and
5 shall report to the court the efforts made to secure that placement.
6 In cases where the Indian Child Welfare Act applies, the placement
7 preferences of the act shall be followed.

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

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

- 20 a. one sibling has resided in a foster family home for
21 six (6) or more months and has established a
22 relationship with the foster family,
23 b. the siblings have never resided in the same home
24 together,

- 1 c. there is no established relationship between the
2 siblings, ~~or~~
- 3 d. the parent has chosen to make a voluntary adoption
4 placement through a licensed child-placing agency, or
- 5 e. it is in the best interests of the child to remain in
6 the current foster family home placement.

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

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

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

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

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

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

7 6. The wishes of the parent, the relative, and the child, if
8 appropriate;

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

12 8. The best interests of the child.

13 C. 1. The Department of Human Services shall consider
14 placement with a relative without delay and shall identify relatives
15 of the child and notify them of the need for temporary placement and
16 the possibility of the need for a permanent out-of-home placement of
17 the child. The relative search shall be reasonable and
18 comprehensive in scope and may continue until a fit and willing
19 relative is identified.

20 2. The relatives shall be notified of the need to keep the
21 Department informed of their current address in order to receive
22 notice when a permanent out-of-home placement is being sought for
23 the child. A relative who fails to provide a current address may
24

1 forfeit the right to be considered for the child's permanent out-of-
2 home placement.

3 3. A decision by a relative to not participate in the child's
4 placement planning at the beginning of the case or to cooperate with
5 the Department to expedite procedures for placement of the child in
6 the child's home may affect whether that relative will be considered
7 for permanent placement of the child if the child cannot be safely
8 returned to the home of the child's parent or parents.

9 D. The Department, while assessing the relatives for the
10 possibility of placement, shall be authorized to disclose to the
11 relative, as appropriate, the fact that the child is in custody, the
12 alleged reasons for the custody, and the projected date for the
13 child's return home or other permanent placement as well as any
14 other confidential information deemed necessary and appropriate to
15 secure a suitable placement.

16 E. Following an initial placement with a relative, whenever a
17 new placement of the child is made, consideration for placement
18 shall again be given as described in this section to approved
19 relatives who will fulfill the reunification or permanent plan
20 requirements of the child. The Department shall consider whether
21 the relative has established and maintained a relationship with the
22 child.

23 F. If the child is not placed with a relative who has been
24 considered for placement pursuant to this section, the Department

1 shall advise the court, in writing, the reasons why that relative
2 was denied and the written reasons shall be made a part of the court
3 record.

4 G. The provisions of this section shall apply to all custody or
5 placement proceedings which concern a child alleged or adjudicated
6 to be deprived including, but not limited to, guardianship and
7 adoption proceedings.

8 SECTION 4. This act shall become effective November 1, 2018.

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