

1 ENGROSSED HOUSE
2 BILL NO. 2858

By: West (Tammy) and Lawson of
the House

3 and

4 Pugh of the Senate
5
6

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

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

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

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

21 1. By a peace officer or employee of the court, without a court
22 order if the officer or employee has reasonable suspicion that:

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

1 b. the circumstances or surroundings of the child are
2 such that continuation in the child's home or in the
3 care or custody of the parent, legal guardian, or
4 custodian would present an imminent safety threat to
5 the child, or

6 c. the child, including a child with a disability, is
7 unable to communicate effectively about abuse, neglect
8 or other safety threat or is in a vulnerable position
9 due to the inability to communicate effectively and
10 the child is in need of immediate protection due to an
11 imminent safety threat; or

12 2. By an order of the district court issued upon the
13 application of the office of the district attorney. The application
14 presented by the district attorney may be supported by a sworn
15 affidavit which may be based upon information and belief. The
16 application shall state facts sufficient to demonstrate to the court
17 that a continuation of the child in the home or with the caretaker
18 of the child is contrary to the child's welfare and there is
19 reasonable suspicion that:

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

22 b. the circumstances or surroundings of the child are
23 such that continuation in the child's home or in the
24 care or custody of the parent, legal guardian, or

1 custodian would present an imminent safety threat to
2 the child, or

3 c. the child, including a child with a disability, is
4 unable to communicate effectively about abuse, neglect
5 or other safety threat or is in a vulnerable position
6 due to the inability to communicate effectively and
7 the child is in need of immediate protection due to an
8 imminent safety threat.

9 The application and order may be verbal and upon being advised by
10 the district attorney or the court of the verbal order, law
11 enforcement shall act on such order. If verbal, the district
12 attorney shall submit a written application and proposed order to
13 the district court within one (1) judicial day from the issuance of
14 the verbal order. Upon approval, the application and order shall be
15 filed with the court clerk; or

16 3. By order of the district court when the child is in need of
17 medical or behavioral health treatment in order to protect the
18 health, safety, or welfare of the child and the parent, legal
19 guardian, or custodian of the child is unwilling or unavailable to
20 consent to such medical or behavioral health treatment or other
21 action, the court shall specifically include in the emergency order
22 authorization for such medical or behavioral health evaluation or
23 treatment as it deems necessary.

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

6 a. designation of persons to serve as contact points for
7 peace officers, including at least one backup contact
8 for each initial contact point,

9 b. a protocol for conducting a safety evaluation at the
10 scene where protective custody is assumed to determine
11 whether the child faces an imminent safety threat and,
12 if so, whether the child can be protected through
13 placement with relatives or others without the
14 Department assuming emergency custody,

15 c. the development of reception centers for accepting
16 protective custody of children from peace officers
17 when the Department is unable to respond at the scene
18 within a reasonable time period,

19 d. a protocol for conducting a safety evaluation at the
20 reception center within twenty-three (23) hours of the
21 assumption of protective custody of a child to
22 determine whether the child faces an imminent safety
23 threat and, if so, whether the child can be protected
24

1 through placement with relatives or others without the
2 Department assuming emergency custody, and
3 e. a protocol, when the child cannot safely be left in
4 the home, for transporting a child to the home of a
5 relative, kinship care home, an emergency foster care
6 home, a shelter, or any other site at which the
7 Department believes the child can be protected,
8 provided that the Department shall utilize a shelter
9 only when the home of a relative, kinship care home,
10 or emergency foster care home is unavailable or
11 inappropriate.

12 2. Beginning January 1, 2010, no child taken into protective
13 custody under paragraph 1 of subsection A of this section shall be
14 considered to be in the emergency custody of the Department until
15 the Department has completed a safety evaluation and has concluded
16 that the child faces an imminent safety threat and the court has
17 issued an order for emergency custody.

18 3. If the safety evaluation performed by the Department of a
19 child taken into protective custody under paragraph 1 of subsection
20 A of this section indicates that the child does not face an imminent
21 safety threat, the Department shall restore the child to the custody
22 and control of the parent, legal guardian, or custodian of the
23 child.
24

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

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

9 2. It is believed that assumption of the custody of the child
10 from the facility can occur without risk to the child or the
11 employee of the Department.

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

14 D. The court shall not enter a prepetition emergency custody
15 order removing a child from the home of the child unless the court
16 makes a determination:

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

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

21 3. An absence of efforts to prevent the removal of the child
22 from the home of the child is reasonable because the removal is due
23 to an emergency and is for the purpose of providing for the safety
24 and welfare of the child.

1 E. Whenever a child is taken into custody pursuant to this
2 section:

3 1. The child may be taken to a kinship care home or an
4 emergency foster care home designated by the Department, or if no
5 such home is available, to a children's shelter located within the
6 county where protective or emergency custody is assumed or, if there
7 is no children's shelter within the county, to a children's shelter
8 designated by the court;

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

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

20 4. The child may be taken directly to or retained in a
21 behavioral health treatment facility for evaluation or inpatient
22 treatment, in accordance with the provisions of the Inpatient Mental
23 Health and Substance Abuse Treatment of Minors Act, when the child
24

1 is in need of behavioral health care to preserve the child's health,
2 or as otherwise directed by the court; ~~and~~

3 5. Unless otherwise provided by administrative order entered
4 pursuant to subsection F of this section, the district court of the
5 county where the custody is assumed shall be immediately notified,
6 verbally or in writing, that the child has been taken into custody.
7 If notification is verbal, written notification shall be sent to the
8 district court within one (1) judicial day of such verbal
9 notification; and

10 6. The parent of the child shall be notified by the court and
11 the Department of Human Services of the availability of voluntary
12 adoption placement of the child with a licensed child-placing agency
13 or federally recognized tribe. The administrative order or
14 emergency custody order shall contain written notification of the
15 availability of voluntary adoption placement.

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

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

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

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

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

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

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

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

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

17 1. Determine whether facts exist that are sufficient to
18 demonstrate to the court there is reasonable suspicion that the
19 child is in need of immediate protection due to abuse or neglect, or
20 that the circumstances or surroundings of the child are such that
21 continuation of the child in the child's home or in the care or
22 custody of the parent, legal guardian, or custodian would present an
23 imminent danger to the child;

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

- 3 a. any right of the parent, legal guardian, or custodian
- 4 to testify and present evidence at court hearings,
- 5 b. the right to be represented by an attorney at court
- 6 hearings,
- 7 c. the consequences of failure to attend any hearings
- 8 which may be held, ~~and~~
- 9 d. the right to appeal and procedure for appealing an
- 10 order of the court, and
- 11 e. the right to make a voluntary adoption placement of
- 12 the child with a licensed child-placing agency;

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

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

1 c. whether to continue the child in or to place the child
2 into the emergency custody of the Department of Human
3 Services;

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

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

17 6. Direct the licensed child-placing agency or federally
18 recognized tribe to provide a copy of the preliminary home study of
19 the prospective adoptive parents from the licensed child-placing
20 agency to the parent. The preliminary home study shall be kept
21 confidential in the court file and in the Department file;

22 7. Prior to the court ordering a transfer of custody, the
23 parent shall be given the opportunity to consult with an attorney,
24 and if the parent is unable to afford an attorney, the court shall

1 appoint one. If, after the parent consults with an attorney, the
2 parent decides to proceed with the voluntary adoption placement and
3 the court determines that the prospective adoptive parents are
4 qualified to adopt the child and the adoption is in the best
5 interests of the child, the court shall immediately order the
6 transfer of custody of the child to the licensed child-placing
7 agency or federally recognized tribe. The licensed child-placing
8 agency or federally recognized tribe shall provide the court and the
9 Department with certified copies of the consent and termination
10 orders of the parent within thirty (30) days of the termination
11 hearing. Upon receipt of the orders, the Department and the court
12 may close their files; and

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

- 15 a. place siblings, who have been removed, together in the
16 same foster care, guardianship, or adoptive placement,
17 and
- 18 b. provide for frequent visitation or other ongoing
19 interaction in the case of siblings who have been
20 removed and who are not placed together.

21 B. The office of the State Court Administrator shall create an
22 affidavit form and make it available to each court responsible for
23 conducting emergency custody hearings. The affidavit form shall
24 contain a notice to the parent, legal guardian, or custodian that

1 failure to identify a parent or relative in a timely manner may
2 result in the child being permanently placed outside of the home of
3 the child's parent or relative. The affidavit form shall also
4 advise the parent, legal guardian, or custodian of the penalties
5 associated with perjury and contempt of court. The original
6 completed affidavit shall be filed with the court clerk no later
7 than five (5) days after the hearing or as otherwise directed by the
8 court and a copy shall be provided to the Department.

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

- 17 a. the child has been or is being removed from the
18 custody of the parent or parents of the child,
- 19 b. of the options under applicable law to participate in
20 the care and placement of the child, including any
21 options that may be lost by failing to respond to the
22 notice, and

1 c. of the requirements to become a foster family home and
2 the additional services and supports available for
3 children placed in the home.

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

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

11 Section 1-4-204. A. 1. When awarding custody or determining
12 the placement of a child, a preference shall be given to relatives
13 and persons who have a kinship relationship with the child unless
14 the parent has chosen to make a voluntary adoption placement with a
15 licensed child-placing agency. The Department of Human Services
16 shall make diligent efforts to place the child with such persons and
17 shall report to the court the efforts made to secure that placement.
18 In cases where the Indian Child Welfare Act applies, the placement
19 preferences of the act shall be followed.

20 2. When two or more children are siblings, every reasonable
21 attempt shall be made to place the siblings in the same home, except
22 as provided in paragraph 3 of this subsection. In making a
23 permanent placement, siblings shall be placed in the same permanent
24 home or, if the siblings are separated, shall be allowed contact or

1 visitation with each other; provided, however, the best interests of
2 each sibling shall be the standard for determining the appropriate
3 custodian or placement as well as the contact and visitation with
4 the other siblings.

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

8 a. one sibling has resided in a foster family home for
9 six (6) or more months and has established a
10 relationship with the foster family,

11 b. the siblings have never resided in the same home
12 together,

13 c. there is no established relationship between the
14 siblings, ~~or~~

15 d. the parent has chosen to make a voluntary adoption
16 placement through a licensed child-placing agency or
17 federally recognized tribe, or

18 e. it is in the best interests of the child to remain in
19 the current foster family home placement.

20 B. In determining the appropriate custodian or placement for a
21 child pursuant to subsection A of this section, the court and the
22 Department shall consider, but not be limited to, the following
23 factors:
24

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

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

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

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

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

19 6. The wishes of the parent, the relative, and the child, if
20 appropriate;

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

24 8. The best interests of the child.

1 C. 1. The Department of Human Services shall consider
2 placement with a relative without delay and shall identify relatives
3 of the child and notify them of the need for temporary placement and
4 the possibility of the need for a permanent out-of-home placement of
5 the child. The relative search shall be reasonable and
6 comprehensive in scope and may continue until a fit and willing
7 relative is identified.

8 2. The relatives shall be notified of the need to keep the
9 Department informed of their current address in order to receive
10 notice when a permanent out-of-home placement is being sought for
11 the child. A relative who fails to provide a current address may
12 forfeit the right to be considered for the child's permanent out-of-
13 home placement.

14 3. A decision by a relative to not participate in the child's
15 placement planning at the beginning of the case or to cooperate with
16 the Department to expedite procedures for placement of the child in
17 the child's home may affect whether that relative will be considered
18 for permanent placement of the child if the child cannot be safely
19 returned to the home of the child's parent or parents.

20 D. The Department, while assessing the relatives for the
21 possibility of placement, shall be authorized to disclose to the
22 relative, as appropriate, the fact that the child is in custody, the
23 alleged reasons for the custody, and the projected date for the
24 child's return home or other permanent placement as well as any

1 other confidential information deemed necessary and appropriate to
2 secure a suitable placement.

3 E. Following an initial placement with a relative, whenever a
4 new placement of the child is made, consideration for placement
5 shall again be given as described in this section to approved
6 relatives who will fulfill the reunification or permanent plan
7 requirements of the child. The Department shall consider whether
8 the relative has established and maintained a relationship with the
9 child.

10 F. If the child is not placed with a relative who has been
11 considered for placement pursuant to this section, the Department
12 shall advise the court, in writing, the reasons why that relative
13 was denied and the written reasons shall be made a part of the court
14 record.

15 G. The provisions of this section shall apply to all custody or
16 placement proceedings which concern a child alleged or adjudicated
17 to be deprived including, but not limited to, guardianship and
18 adoption proceedings.

19 SECTION 4. This act shall become effective November 1, 2018.
20
21
22
23
24

1 Passed the House of Representatives the 14th day of March, 2018.

2
3
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2018.

6
7
8 Presiding Officer of the Senate