

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 774

By: Smalley

4  
5  
6 AS INTRODUCED

7 An Act relating to emergency custody of children;  
8 amending 10A O.S. 2011, Sections 1-4-201, as amended  
9 by Section 3, Chapter 355, O.S.L. 2014, 1-4-203, as  
10 amended by Section 2, Chapter 173, O.S.L. 2015, 1-4-  
11 206 and 1-4-601 (10A O.S. Supp. 2018, Sections 1-4-  
12 201 and 1-4-203), which relate to the Oklahoma  
13 Children's Code; requiring probable cause for taking  
14 custody without a court order; prescribing probable  
15 cause for taking custody with a court order;  
16 mandating court to use probable cause standard at  
17 emergency custody hearing; directing court to advise  
18 person of right to certain hearing for release of  
19 child; permitting restraining order against alleged  
20 abuse perpetrator based on probable cause; requiring  
21 probable cause to prevent certain release from  
22 emergency custody; creating hearing procedure for  
23 release of child in emergency custody; specifying  
24 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.

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

22 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-201, as  
23 amended by Section 3, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2018,  
24 Section 1-4-201), is amended to read as follows:

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

4 1. By a peace officer or employee of the court, without a court  
5 order if the officer or employee has ~~reasonable suspicion~~ probable  
6 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; or

20 2. By an order of the district court issued upon the  
21 application of the office of the district attorney. The application  
22 presented by the district attorney may be supported by a sworn  
23 affidavit which may be based upon information and belief. The  
24 application shall state facts sufficient to demonstrate to the court

1 that a continuation of the child in the home or with the caretaker  
2 of the child is contrary to the child's welfare and there is  
3 ~~reasonable suspicion~~ probable cause to believe that:

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

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

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

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

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

1 when the Department is unable to respond at the scene  
2 within a reasonable time period,

3 d. a protocol for conducting a safety evaluation at the  
4 reception center within twenty-three (23) hours of the  
5 assumption of protective custody of a child to  
6 determine whether the child faces an imminent safety  
7 threat and, if so, whether the child can be protected  
8 through placement with relatives or others without the  
9 Department assuming emergency custody, and

10 e. a protocol, when the child cannot safely be left in  
11 the home, for transporting a child to the home of a  
12 relative, kinship care home, an emergency foster care  
13 home, a shelter, or any other site at which the  
14 Department believes the child can be protected,  
15 provided that the Department shall utilize a shelter  
16 only when the home of a relative, kinship care home,  
17 or emergency foster care home is unavailable or  
18 inappropriate.

19 2. Beginning January 1, 2010, no child taken into protective  
20 custody under paragraph 1 of subsection A of this section shall be  
21 considered to be in the emergency custody of the Department until  
22 the Department has completed a safety evaluation and has concluded  
23 that the child faces an imminent safety threat and the court has  
24 issued an order for emergency custody.

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

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

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

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

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

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

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

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

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

7           E. Whenever a child is taken into custody pursuant to this  
8 section:

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

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

22           3. The child may be taken directly to or retained in a health  
23 care facility for medical treatment, when the child is in need of  
24

1 emergency medical treatment to maintain the child's health, or as  
2 otherwise directed by the court; or

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

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

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. 2018,  
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~~ probable  
19 cause to believe that the child is in need of immediate protection  
20 due to abuse or neglect, or that the circumstances or surroundings  
21 of the child are such that continuation of the child in the child's  
22 home or in the care or custody of the parent, legal guardian, or  
23 custodian would present an 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 a hearing at any time prior to
- 12          disposition seeking release of the child from
- 13          emergency custody;

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

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

1 protect the health, safety, or welfare of the child,  
2 or

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

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

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

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

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

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

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

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

16 Section 1-4-206. A. 1. At the emergency custody hearing or  
17 when a petition has been filed alleging that a child has been  
18 physically or sexually abused, the court may enter an order  
19 restraining the alleged perpetrator of the abuse from having contact  
20 with the child or attempting to contact the child and requiring the  
21 alleged perpetrator to move from the household in which the child  
22 resides. The court may issue a restraining order only if the court  
23 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  
25

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  
25

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  
25

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, 2019.

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