

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 ENGROSSED HOUSE
4 BILL NO. 1273

By: Lawson of the House

5 and

6 Stanley of the Senate

7
8 An Act relating to children; amending 10A O.S. 2011,
9 Sections 1-4-501 and 1-4-909, which relate to the
10 Oklahoma Children's Code; authorizing counsel for
11 Department of Human Services to represent interests
12 of state in certain proceedings; providing for
13 consent of district attorney; modifying when child
14 may request court to reinstate terminated parental
15 rights; lowering age requirement of child; providing
16 retroactive applicability for certain sibling groups;
17 granting retroactive applicability for child of a
18 failed permanency plan; and providing an effective
19 date.

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

21 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-501, is
22 amended to read as follows:

23 Section 1-4-501. Except as otherwise provided by this Code, the
24 district attorney shall prepare and prosecute every hearing and
25 proceeding within the purview of the Oklahoma Children's Code, and
26 shall act as petitioner in all cases; provided, counsel for the
Department of Human Services may, with consent of the district

1 attorney, represent the interests of the state in proceedings
2 involving a child in the permanent legal custody of the Department.

3 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-909, is
4 amended to read as follows:

5 Section 1-4-909. A. A child may, by application, request the
6 court to reinstate the previously terminated parental rights of his
7 or her parent under the following circumstances:

8 1. The child was previously found to be a deprived child;

9 2. The parent's rights were terminated in a proceeding under
10 ~~Title 10A of the Oklahoma Statutes~~ this title;

11 3. ~~The~~ At least three (3) years have passed since the final
12 order of termination of parental rights and:

13 a. the child has not achieved his or her permanency plan
14 ~~within three (3) years of a final order of~~
15 ~~termination,~~

16 b. a permanency plan of adoption has failed, or

17 c. a permanency plan of guardianship has failed; and

18 4. The child is at least ~~fifteen (15)~~ fourteen (14) years old
19 at the time the application is filed.

20 B. A child shall be represented during the proceeding and shall
21 be provided independent counsel.

22 C. The application shall be signed by the child as well as the
23 child's attorney.

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1 D. If, after a preliminary hearing to consider the parent's
2 apparent fitness and interest in reinstatement of parental rights,
3 the court finds by a preponderance of the evidence that the best
4 interests of the child may be served by reinstatement of parental
5 rights, the court shall order that a hearing on the merits of the
6 motion be held.

7 E. The court shall cause prior notice to be given to the
8 Department of Human Services, the child's attorney, and the child.
9 The court shall also order the Department or the child's attorney to
10 give prior notice of any hearing to:

- 11 1. The former parent of the child whose parental rights are the
12 subject of the application;
- 13 2. The current foster parent or relative guardian of the child;
- 14 3. The guardian ad litem of the child, if any; and
- 15 4. The child's tribe, if applicable.

16 F. The application of the child shall be dismissed if the
17 parent cannot be located.

18 G. The court shall conditionally grant the application if it
19 finds by clear and convincing evidence that the child has not and is
20 not likely to imminently achieve his or her permanency plan and that
21 reinstatement of parental rights is in the child's best interest.
22 In determining whether reinstatement is in the child's best
23 interest, the court shall consider, but is not limited to, the
24 following:

1 1. Whether the parent whose rights are to be reinstated is a
2 fit parent and has remedied the conditions as provided in the record
3 of the prior termination proceedings and prior termination order;

4 2. The age and maturity of the child, and the ability of the
5 child to express his or her preference;

6 3. Whether the reinstatement of parental rights will present a
7 risk to the health, safety, or welfare of the child; and

8 4. Other material changes in circumstances, if any, that may
9 have occurred which warrant the granting of the application.

10 H. In determining whether the child has or has not achieved his
11 or her permanency plan, the Department shall provide the court, and
12 the court shall review, information related to any efforts to
13 achieve the permanency plan including efforts to achieve adoption or
14 a permanent guardianship.

15 I. 1. If the court conditionally grants the application under
16 subsection G of this section, the case shall be continued for six
17 (6) months and a temporary order of reinstatement of parental rights
18 entered. During this period, the child shall be placed in the
19 custody of the parent. The Department shall develop a permanency
20 plan for the child reflecting the plan to be reunification and shall
21 provide or ensure that transition services are provided to the
22 family as appropriate.

23 2. If the child must be removed from the parent due to abuse or
24 neglect allegations prior to the expiration of the conditional six-

1 month period, the court shall dismiss the application for
2 reinstatement of parental rights if the court finds the allegations
3 have been proven by a preponderance of the evidence.

4 J. The court shall hold a hearing after the child has been
5 placed with the parent for six (6) months. If the placement with
6 the parent has been successful, the court shall enter a final order
7 of reinstatement of parental rights, which shall restore all rights,
8 powers, privileges, immunities, duties, and obligations of the
9 parent to the child, including those relating to custody, control,
10 and support of the child. The court shall close the deprived action
11 and direct the court clerk's office to provide a certified copy of
12 the final order of reinstatement of parental rights to the parent at
13 no cost.

14 K. A proceeding to reinstate parental rights is a separate
15 action from the termination of parental rights proceeding and does
16 not vacate the original termination of parental rights. An order
17 granted under this section reinstates the parental rights to the
18 child and acknowledges that the conditions of the parent and child
19 have changed since the time of the termination of parental rights
20 and that reunification is now appropriate.

21 L. This section is retroactive and shall apply to any:

22 1. Any child who is under the jurisdiction of the district
23 court as a deprived child at the time of the hearing to reinstate
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1 parental rights regardless of the date when parental rights were
2 terminated;

3 2. The sibling group of a child when, at the discretion of the
4 court, parental rights to one child of the sibling group have been
5 reinstated; and

6 3. The child of a failed permanency plan of adoption or
7 guardianship when parental rights of the parents of the child were
8 terminated for three (3) or more years at the time of the
9 application of the child to reinstate parental rights.

10 M. The district attorney, the Department, and its employees are
11 not liable for civil damages resulting from any act or omission in
12 providing services under this section unless the act or omission
13 constitutes gross negligence. This section does not create any duty
14 and shall not be construed to create a duty where none exists. This
15 section does not create a cause of action against the district
16 attorney, the Department, or its employees concerning the original
17 order of termination of parental rights.

18 SECTION 3. This act shall become effective November 1, 2019.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
20 April 2, 2019 - DO PASS

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