

# An Act

ENROLLED HOUSE  
BILL NO. 1273

By: Lawson of the House

and

Stanley of the Senate

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

SUBJECT: Oklahoma Children's Code

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

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

Section 1-4-501. Except as otherwise provided by this Code, the district attorney shall prepare and prosecute every hearing and proceeding within the purview of the Oklahoma Children's Code, and shall act as petitioner in all cases; provided, counsel for the Department of Human Services may, with consent of the district attorney, represent the interests of the state in proceedings involving a child in the permanent legal custody of the Department.

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

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

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

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

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

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

b. a permanency plan of adoption has failed, or

c. a permanency plan of guardianship has failed; and

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

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

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

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

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

1. The former parent of the child whose parental rights are the subject of the application;

2. The current foster parent or relative guardian of the child;
3. The guardian ad litem of the child, if any; and
4. The child's tribe, if applicable.

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

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

1. Whether the parent whose rights are to be reinstated is a fit parent and has remedied the conditions as provided in the record of the prior termination proceedings and prior termination order;
2. The age and maturity of the child, and the ability of the child to express his or her preference;
3. Whether the reinstatement of parental rights will present a risk to the health, safety, or welfare of the child; and
4. Other material changes in circumstances, if any, that may have occurred which warrant the granting of the application.

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

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

2. If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the application for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

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

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

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

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

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

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

M. The district attorney, the Department, and its employees are not liable for civil damages resulting from any act or omission in providing services under this section unless the act or omission constitutes gross negligence. This section does not create any duty

and shall not be construed to create a duty where none exists. This section does not create a cause of action against the district attorney, the Department, or its employees concerning the original order of termination of parental rights.

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

Passed the House of Representatives the 6th day of March, 2019.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 23rd day of April, 2019.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_