

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE  
5 BILL NO. 170

By: Howard of the Senate

and

Kannady of the House

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8  
9 An Act relating to judicial authorization for  
10 anatomical gift; amending 10A O.S. 2011, Section 1-3-  
11 102, which relates to medical care and treatment of  
12 child in protective custody; authorizing court to  
13 order procurement of anatomical gifts under certain  
14 circumstances; amending 63 O.S. 2011, Sections  
15 2200.8A, 2200.9A and 2200.10A, which relate to the  
16 Oklahoma Uniform Anatomical Gift Act; providing  
17 exceptions; conforming language; updating statutory  
18 references; and providing an effective date.

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

20 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-3-102, is  
21 amended to read as follows:

22 Section 1-3-102. A. For purposes of this section:

23 1. "Routine and ordinary medical care and treatment" includes  
24 any necessary medical and dental examinations and treatment, medical  
25 screenings, clinical laboratory tests, blood testing, preventative  
26 care, health assessments, physical examinations, immunizations,  
27 contagious or infectious disease screenings or tests and care

1 required for treatment of illness and injury, including x-rays,  
2 stitches and casts, or the provision of psychotropic medications but  
3 does not include any type of extraordinary care; and

4 2. "Extraordinary medical care and treatment" includes, but is  
5 not limited to, surgery, general anesthesia, blood transfusions, or  
6 invasive or experimental procedures.

7 B. If a child taken into protective custody without a court  
8 order requires emergency medical care prior to the emergency custody  
9 hearing, and either the treatment is related to the suspected abuse  
10 or neglect or the parent or legal guardian is unavailable or  
11 unwilling to consent to treatment recommended by a physician, a  
12 peace officer, court employee or the court may authorize such  
13 treatment as is necessary to safeguard the health or life of the  
14 child. Before a peace officer, court employee or the court  
15 authorizes treatment based on unavailability of the parent or legal  
16 guardian, law enforcement shall exercise diligence in locating the  
17 parent or guardian, if known.

18 C. 1. If a child has been placed in the custody of the  
19 Department of Human Services, the Department shall have the  
20 authority to consent to routine and ordinary medical care and  
21 treatment. The Department shall make reasonable attempts to notify  
22 the child's parent or legal guardian of the provision of routine and  
23 ordinary medical care and treatment and to keep the parent or legal  
24 guardian involved in such care.

1           2. In no case shall the Department consent to a child's  
2 abortion, sterilization, termination of life support or a "Do Not  
3 Resuscitate" order. The court may authorize the withdrawal of life-  
4 sustaining medical treatment or the denial of the administration of  
5 cardiopulmonary resuscitation on behalf of a child in the  
6 Department's custody, and may additionally authorize anatomical  
7 gifts to be procured from such child if the withdrawal of life-  
8 sustaining medical treatment or denial of the administration of  
9 cardiopulmonary resuscitation is authorized, upon the written  
10 recommendation of a licensed physician of such withdrawal or denial  
11 and of such procurement, as applicable, after notice to the parties  
12 and a hearing.

13           3. Nothing herein shall prevent the Department from  
14 authorizing, in writing, any person, foster parent or administrator  
15 of a facility into whose care a child in its custody has been  
16 entrusted, to consent to routine and ordinary medical care and  
17 treatment to be rendered to a child upon the advice of a licensed  
18 physician, including the continuation of psychotropic medication.

19           D. Consent for a child's extraordinary medical care and  
20 treatment shall be obtained from the parent or legal guardian unless  
21 the treatment is either related to the abuse or neglect or the  
22 parent or legal guardian is unavailable or refuses to consent to  
23 such care, in which case in an emergency, based upon recommendation  
24 of a physician, the court may enter an ex parte order authorizing

1 such treatment or procedure in order to safeguard the child's health  
2 or life. If the recommended extraordinary medical care and  
3 treatment is not an emergency, the court shall hold a hearing, upon  
4 application by the district attorney and notice to all parties, and  
5 may authorize such recommended extraordinary care.

6 E. If a child has been placed in the custody of a person, other  
7 than a parent or legal guardian, or an institution or agency other  
8 than the Department, the court shall determine the authority of the  
9 person, institution, or agency to consent to medical care including  
10 routine and ordinary medical care and treatment and extraordinary  
11 care. The parent, legal guardian, or person having legal custody  
12 shall be responsible for the costs of medical care as determined by  
13 the court.

14 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2200.8A, is  
15 amended to read as follows:

16 Section 2200.8A. A. Except as otherwise provided in paragraph  
17 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma  
18 Statutes and subsection G of this section, and subject to subsection  
19 F of this section, in the absence of an express, contrary indication  
20 by the donor, a person other than the donor is barred from making,  
21 amending, or revoking an anatomical gift of a donor's body or part  
22 if the donor made an anatomical gift of the donor's body or part  
23 under ~~Section 5 of this act~~ Section 2200.5A of this title or an

24

1 amendment to an anatomical gift of the donor's body or part under  
2 ~~Section 6 of this act~~ Section 2200.6A of this title.

3 B. A donor's revocation of an anatomical gift of the donor's  
4 body or part under ~~Section 6 of this act~~ Section 2200.6A of this  
5 title is not a refusal and does not bar another person specified in  
6 ~~Section 4 or 9 of this act~~ Section 2200.4A or 2200.9A of this title  
7 from making an anatomical gift of the donor's body or part under  
8 ~~Section 5 or 10 of this act~~ Section 2200.5A or 2200.10A of this  
9 title.

10 C. If a person other than the donor makes an unrevoked  
11 anatomical gift of the donor's body or part under ~~Section 5 of this~~  
12 ~~act~~ Section 2200.5A of this title or an amendment to an anatomical  
13 gift of the donor's body or part under ~~Section 6 of this act~~ Section  
14 2200.6A of this title, another person may not make, amend, or revoke  
15 the gift of the donor's body or part under ~~Section 10 of this act~~  
16 Section 2200.10A of this title.

17 D. A revocation of an anatomical gift of a donor's body or part  
18 under ~~Section 6 of this act~~ Section 2200.6A of this title by a  
19 person other than the donor does not bar another person from making  
20 an anatomical gift of the body or part under ~~Section 5 or 10 of this~~  
21 ~~act~~ Section 2200.5A or 2200.10A of this title.

22 E. In the absence of an express, contrary indication by the  
23 donor or other person authorized to make an anatomical gift under  
24 ~~Section 4 of this act~~ Section 2200.4A of this title, an anatomical

1 gift of a part is neither a refusal to give another part nor a  
2 limitation on the making of an anatomical gift of another part at a  
3 later time by the donor or another person.

4 F. In the absence of an express, contrary indication by the  
5 donor or other person authorized to make an anatomical gift under  
6 ~~Section 4 of this act~~ Section 2200.4A of this title, an anatomical  
7 gift of a part for one or more of the purposes set forth in ~~Section~~  
8 ~~4 of this act~~ Section 2200.4A of this title is not a limitation on  
9 the making of an anatomical gift of the part for any of the other  
10 purposes by the donor or any other person under ~~Section 5 or 10 of~~  
11 ~~this act~~ Section 2200.5A or 2200.10A of this title.

12 G. If a donor who is an unemancipated minor dies, a parent of  
13 the donor who is reasonably available may revoke or amend an  
14 anatomical gift of the donor's body or part.

15 H. If an unemancipated minor who signed a refusal dies, a  
16 parent of the minor who is reasonably available may revoke the  
17 minor's refusal.

18 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2200.9A, is  
19 amended to read as follows:

20 Section 2200.9A. A. Subject to subsections B and C of this  
21 section and unless barred by ~~Section 7 or 8 of this act~~ Section  
22 2200.7A or 2200.8A of this title, an anatomical gift of a decedent's  
23 body or part for purpose of transplantation, therapy, research, or  
24 education may be made by any member of the following classes of

1 persons who is reasonably available, in the order of priority  
2 listed:

3 1. An agent of the decedent at the time of death who could have  
4 made an anatomical gift under paragraph 2 of ~~Section 4 of this act~~  
5 Section 2200.4A of this title immediately before the decedent's  
6 death;

7 2. The spouse of the decedent;

8 3. Adult children of the decedent;

9 4. Parents of the decedent;

10 5. Adult siblings of the decedent;

11 6. Adult grandchildren of the decedent;

12 7. Grandparents of the decedent;

13 8. An adult who exhibited special care and concern for the  
14 decedent;

15 9. The persons who were acting as the guardians of the person  
16 of the decedent at the time of death; ~~and~~

17 10. A court pursuant to an order entered pursuant to paragraph  
18 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma  
19 Statutes; and

20 11. Any other person having the authority to dispose of the  
21 decedent's body.

22 B. If there is more than one member of a class listed in  
23 paragraph 1, 3, 4, 5, 6, 7 or 9 of subsection A of this section  
24 entitled to make an anatomical gift, an anatomical gift may be made

1 by a member of the class unless that member or a person to whom the  
2 gift may pass under ~~Section 11 of this act~~ Section 2200.11A of this  
3 title knows of an objection by another member of the class. If an  
4 objection is known, the gift may be made only by a majority of the  
5 members of the class who are reasonably available.

6 C. A person may not make an anatomical gift if, at the time of  
7 the decedent's death, a person in a prior class under subsection A  
8 of this section is reasonably available to make or to object to the  
9 making of an anatomical gift.

10 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2200.10A, is  
11 amended to read as follows:

12 Section 2200.10A. A. A person authorized to make an anatomical  
13 gift under ~~Section 9 of this act~~ Section 2200.9A of this title may  
14 make an anatomical gift by a document of gift signed by the person  
15 making the gift or by that person's oral communication that is  
16 electronically recorded or is contemporaneously reduced to a record  
17 and signed by the individual receiving the oral communication.

18 B. ~~Subject~~ Except as provided by paragraph 2 of subsection C of  
19 Section 1-3-102 of Title 10A of the Oklahoma Statutes and subject to  
20 subsection C of this section, an anatomical gift by a person  
21 authorized under ~~Section 9 of this act~~ Section 2200.9A of this title  
22 may be amended or revoked orally or in a record by any member of a  
23 prior class who is reasonably available. If more than one member of  
24 the prior class is reasonably available, the gift made by a person



1 authorized under ~~Section 9 of this act~~ Section 2200.9A of this title  
2 may be:

3 1. Amended only if a majority of the reasonably available  
4 members agree to amending the gift; or

5 2. Revoked only if a majority of the members agree to the  
6 revoking of the gift or if they are equally divided as to whether to  
7 revoke the gift.

8 C. A revocation under subsection B of this section is effective  
9 only if, before an incision has been made to remove a part from the  
10 donor's body or before invasive procedures have begun to prepare the  
11 recipient, the procurement organization, transplant hospital, or  
12 physician or technician knows of the revocation.

13 SECTION 5. This act shall become effective November 1, 2021.

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15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
16 03/30/2021 - DO PASS.

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