

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1356

By: Seikel

AS INTRODUCED

An Act relating to children; prohibiting certain conditions for adoptions; making certain actions unlawful; providing exceptions; providing for construction; providing penalty; amending 10 O.S. 1991, Sections 60.5, 60.5A, 60.12, 60.13 and 60.15, which relate to adoption; clarifying language; deleting obsolete language; making certain information mandatory; requiring certain procedures and reports; providing for contents; providing for certain disclosures; providing for contents; providing conditions for entry of certain decrees; providing for qualification of certain persons; modifying who may make certain studies; providing for contents of home studies; removing certain responsibility from the Department of Human Services; providing for certain investigations; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.4A of Title 10, unless there is created a duplication in numbering, reads as follows:

A. No decree of adoption shall be entered for the adoption of a child until one of the following conditions has been met:

1. The child sought to be adopted has been placed with the petitioners for adoption by the Department of Human Services or by a licensed child placement agency; or

2. The petitioner is related to the child by blood or marriage within the third degree; or

3. The petitioner is a stepparent of the child sought to be adopted; or

4. The petitioner was nominated in the will of a deceased parent of the child as a guardian or an adoptive parent; or

5. The child has been lawfully placed under the laws of another state while the child and petitioner resided in that other state; or

6. The child, who is an Indian child, as defined by the federal Indian Child Welfare Act (25 U.S.C. Section 1903) and Section 40.2 of Title 10 of the Oklahoma Statutes, was placed by the child's Indian tribe with petitioners; or

7. In the case of a child who is over the age of fourteen (14), the petition for adoption has been approved in writing by the Department of Human Services or by an adoption agency licensed by said Department. Any petitioner aggrieved by the refusal of the Department or of an agency to approve such petition after being requested to do so, may appeal such refusal within thirty (30) days of the refusal to the district court in which the petition for adoption is pending, which court shall make final determination as to the allowance or dismissal of the petition.

B. 1. No person shall place or knowingly facilitate the placement of any child in the care or control of any other person not related to such child by blood or marriage, or in the care or control of any organization other than the Department of Human Services or a licensed child placement agency, for purposes of adoption.

2. No person unrelated to such a child by blood or marriage, and no organization other than the Department of Human Services or a licensed child placement agency, shall receive such a child for purposes of adoption, except from the Department of Human Services or a licensed placement agency.

C. 1. This section shall not apply to placement of any child made prior to the effective date of this act.

2. Nothing in this section shall prevent the placement of a child who is not a citizen of the United States when a home study of the prospective parent or parents prior to the placement of the child is performed by a licensed placement agency.

D. For the purpose of this section:

1. The spouse of the parent of a child shall be deemed to be related by marriage to said child; and

2. Facilitation of the placement of a child shall include advertising for placement of a child or advertising to acquire a child to place by a person or agency not authorized or licensed to place children.

E. Willful violation of the provisions of this section shall be deemed to be trafficking in children, and shall, upon conviction, be punishable as otherwise provided by Section 867 of Title 21 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 60.5, is amended to read as follows:

Section 60.5 Unless consent is not required by Section 60.6 of this title, an adoption of a child may be decreed when there has been filed written consent to adoption executed by:

~~(1)~~ 1. Both parents, if living, or the surviving parent if one parent be deceased. Consent shall not be required from one whose parental rights have been judicially terminated.

If the child is born out of wedlock, its parents, if sixteen (16) years of age or older, shall be deemed capable of giving consent.

If the mother or father be below the age of sixteen (16), consent to the adoption shall be deemed sufficient if given by such mother or father before a judge of the district court, in writing, and if accompanied by the written consent of the legal guardian of the person of such parent. If such underage mother or father has no such guardian, the consent shall be accompanied by the written consent of his or her parents, but if one parent be deceased or the parents be divorced, then the written consent of the parent having the custody shall be deemed sufficient; if both parents of the underage mother or father be deceased, then the written consent of the person having his or her physical custody shall be deemed sufficient. If in any case consent cannot be secured from the person, other than the underage mother or father, authorized herein to give consent, notice by mailing shall be given by the court, unless notice is waived by personal appearance, to such person or persons authorized herein to give consent, directing such person to show cause, at a time appointed by the court, which shall be not less than ten (10) days from the date of mailing, why adoption should not be granted without that person's consent. If such person shall not appear to contest the adoption or if the court should find that consent of such person is unreasonably withheld, the adoption may be granted without the consent of that person; or

~~(2)~~ 2. The legal guardian of the person of the child or the guardian ad litem of the child if both parents are dead, or if the rights of the parents have been terminated by judicial proceedings, and such guardian or guardian ad litem has authority by order of the court appointing him to consent to the adoption; or

~~(3)~~ 3. The executive head of an agency if both parents are dead, or if the child has been relinquished for adoption to such

agency, or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

~~(4)~~ 4. Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consent required by ~~subparagraphs (1)~~ paragraphs 1, ~~(2)~~ 2 and ~~(3)~~ 3 hereof, including the consent required by the parent, guardian or party having physical custody as required for mothers or fathers under sixteen (16) in ~~subparagraph (1)~~ paragraph 1 hereof, shall be acknowledged before a judge of the district court or the judge of any specially created court having jurisdiction in adoption proceedings. Provided, that when the person whose consent is necessary does not reside in the county having jurisdiction of the adoption proceedings such person may execute such consent before a district judge of this state or probate judge or judge having adoption jurisdiction of any other state of the county of his residence. Provided, further, that when such consent for adoption is necessary for children in custody of the Department of ~~Public Welfare~~ Human Services, the Director of ~~Public Welfare~~ the Department of Human Services or the designee of the Director may designate, authorize, and direct in writing an employee of the Department to appear in the court of the county in which said adoption proceedings are to be completed and to give written consent for the adoption of such child by the family whose application for adoption has been approved by the Department of ~~Public Welfare~~ Human Services. This provision shall apply to consents heretofore given as well as to those given after the approval of this act; or

~~(5)~~ 5. In the event the person having the legal custody or the parents of a child desired to be adopted in this state reside in a

country or place other than the United States of America, the consent of such person to the adoption may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of government of the place of his, her or their residence who is authorized to administer oaths under the laws of such country or place; or, when the party seeking to give such consent is a member of the United States Armed Services stationed in a country or place other than the United States, then such consent may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths. Where consent is so obtained, it shall not be necessary for such person to appear before the district court having jurisdiction of the adoption proceedings. If the written instrument containing such consent is written in any language other than the English language, the person adopting the child must have it translated into the English language by a person qualified so to do, and must file the original instrument together with the translation with the court, and the translation must be sworn to as being a true and correct translation by the translator.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 60.5A, is amended to read as follows:

Section 60.5A A. ~~When ordered by the court, any~~ Any person required to consent to the adoption of a child pursuant to the provisions of Section 60.5 of Title 10 of the Oklahoma Statutes shall complete a medical history form which shall remain confidential pursuant to the provisions of Section 60.17 of Title 10 of the Oklahoma Statutes containing, as far as is ascertainable, the medical history of the child to be adopted, the medical history of the natural parents of the child, and the medical history of the natural grandparents of the child.

Specifically, the form shall only contain information concerning:

1. The child, which shall include:

- a. any medical or psychological evaluations, and
- b. diseases, illnesses, accidents, allergies, and congenital defects; and

2. Parents of the child, which shall include:

- a. allergies, diseases, and illnesses, including but not limited to diabetes, high blood pressure, alcoholism, heart disease, venereal disease, and epilepsy, and
- b. drugs taken and consumption of alcohol during the pregnancy of the mother; and

3. Grandparents of the child, which shall include allergies, diseases, and illnesses including but not limited to high blood pressure, diabetes, heart disease, and epilepsy.

B. A copy of the medical history form shall be attached to the consent for adoption, or may be filed after the filing of the petition with the consent of the court.

C. The provisions of this section shall not apply to children who are placed for adoption prior to July 1, 1984.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 60.12, is amended to read as follows:

Section 60.12 ~~(1)~~ A. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

~~(a)~~ 1. The full names, ages and places of residence of the petitioners and, if married, the place and date of the marriage~~;~~;

~~(b)~~ 2. When the petitioners acquired or intend to acquire custody of the child and from what person or agency~~;~~;

~~(c)~~ 3. The date and place of birth of the child and sex and race~~;~~;

~~(d)~~ 4. The name used for the child in the proceeding and, if a change in name is desired, the new name~~;~~;

~~(e)~~ 5. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

~~(f)~~ 6. A full description and statement of value of all property owned or possessed by the child, if any; and

~~(g)~~ 7. Facts, if any, which excuse consent on the part of the parents, or either of them, to the adoption.

~~(2)~~ B. Any written consent required by this Act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

C. A written report shall be attached to the petition, or may be filed after the filing of the petition, but prior to the final decree of adoption, with the consent of the court, which discloses to the court all of the costs, funds, monies, or other compensation on anything of value, expended by the adoptive family or expected to be expended in connection with the adoption of the child. Said disclosure shall include but not be limited to the costs of adoption agency fees, advertising, home study fees, physician fees, attorney fees, medical costs paid for birth mother and child, any living expenses paid for mother and child, including shelter, clothing, education, transportation, and other expenses. No final decree of adoption shall be entered until the Court is satisfied that all costs and expenses have been disclosed, and that the costs and expenses are reasonable and do not violate the provisions of and are allowable expenses pursuant to Sections 865 through 869 of Title 21 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 60.13, is amended to read as follows:

Section 60.13 A. Upon the filing of a petition for adoption, the court shall order or receive a ~~preplacement investigation~~ home study and report to be made by:

1. The agency having custody or legal guardianship of the child; or

2. The State Department of Human Services; or

3. A licensed child-placing agency or certified adoption agency; or

4. A person ~~qualified by training or experience~~, designated by the court who meets one of the following qualifications:

a. a master's degree in social work and one (1) year of experience in children's services,

b. a member of the Academy of Certified Social Workers (ACSW) and one (1) year of experience in children's services,

c. a master's degree in a behavioral or social science and two (2) years experience in children's services,
or

d. a doctorate in a behavioral or social science and one (1) year of experience in children's services; or

5. A person who is supervised by a person described in paragraph 4 of this subsection, and who meets one of the following qualifications:

a. a bachelor's degree in social work, or

b. a bachelor's degree in behavioral or social science and one (1) year of experience in children's or family services.

B. The court shall order that a report of such ~~preplacement investigation~~ home study be filed with the court by the designated investigator within the time fixed by the court and in no event more than sixty (60) days from the issuance of the order for ~~preplacement investigation~~ home study, unless time therefor is extended by the court.

C. 1. The ~~preplacement investigation~~ home study shall include an appropriate inquiry to determine whether the proposed home is a

suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge; and, in this entire matter of investigation, the court is specifically authorized to exercise judicial knowledge and discretion.

2. The home study shall consist of documentation of at least one individual interview with each parent, each school-age child and any other household member, one joint interview, a home visit and three written references.

3. The home study shall also include verification that the home is a healthy, safe environment in which to raise a child, as well as verification of marital status, employment, income, access to medical care, physical health and history, and a criminal background check.

D. A supplemental report including a determination as to the legal availability or status of the child for adoption shall be filed prior to the final adoption petition.

E. The court may order agencies named in subsection A of this section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

F. The report of such ~~preplacement investigation~~ home study shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and the reasons therefor.

G. Provided, that if the child petitioned to be adopted shall be the natural or adopted child of either of the petitioners then no investigation shall be made.

H. The Department of Human Services shall not be required to make a home study and report to the court on adoptive placements made by unlicensed agencies or persons.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 60.15, is amended to read as follows:

Section 60.15 Upon examination of the report required in Section ~~13~~ 60.13 of this title, and after hearing, the court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the court. Thereafter the investigator, who shall meet the qualifications specified in Section 60.13 of this title, shall observe the child in his proposed adoptive home and report in writing to the court on any circumstances or conditions which may have a bearing on the granting of a final adoption decree. After six (6) months from the date of the interlocutory decree the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the ~~State~~ Department of ~~Public Welfare~~ Human Services in those cases where said Department has original custody, or the investigator. The investigator shall file with the court a written report of its findings and recommendations and certify that the required examination has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear unless the presence of the child is waived by the court, the court may enter a final decree of adoption, if satisfied that the adoption is for the best interests of the child.

SECTION 7. This act shall become effective July 1, 1993.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

