

ENGROSSED HOUSE
BILL NO. 1999

By: Seikel of the House
and
Henry of the Senate

An Act relating to children; amending 10 O.S. 1991, Section 60.6, as amended by Section 2, Chapter 253, O.S.L. 1993, and 60.7 (10 O.S. Supp. 1994, Section 60.6), which relates to adoption; authorizing an affidavit disclaiming interest to a child; waiving certain rights; setting and providing for certain procedures; providing for contents; providing for use; providing for legal presumptions; providing for construction of statute providing for notice; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 60.6, as amended by Section 2, Chapter 253, O.S.L. 1993 (10 O.S. Supp. 1994, Section 60.6), is amended to read as follows:

Section 60.6 A child under eighteen (18) years of age cannot be adopted without the consent of its parents, if living, except that consent is not required from:

1. A parent whose parental rights have been terminated pursuant to the provisions of Sections 1130, 1131 or 29.1 of this title; or

2. A parent who, for a period of twelve (12) months immediately preceding the filing of a petition for adoption of a child, has willfully failed, refused, or neglected to contribute to the support of such child:

- a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
- b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto; or and where any of the above conditions exist it shall not be necessary to terminate parental rights under Section 1130 of this title prior to the adoption of said child. Provided that any decree of adoption heretofore entered by any court of appropriate jurisdiction within the State of Oklahoma wherein termination of parental rights, as prescribed in Section 1130 of this title, was not obtained shall not be invalid on the ground that such termination of parental rights was not obtained.

The incarceration of a parent shall not prevent termination of parental rights under this section; or

3. The father or putative father of a child born out of wedlock if:

- a. prior to the hearing provided for in Section 29.1 of this title, and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy, or
- b. at the hearing provided for in Section 29.1 of this title:
 - (1) he fails to prove that he is the father of the child, or
 - (2) having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall not include those instances where the father or putative father fails to prove to the satisfaction of the court that he made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice, or

- c. he waives in writing his right to notice of the hearing provided for in Section 29.1 of this title, ~~or~~
- d. he fails to appear at the hearing provided for in Section 29.1 of this title if all notice requirements continued in or pursuant to Section 1131 of this title have been met, or
- e. he completes an affidavit disclaiming any interest in the child, and waiving notice to any future proceedings regarding adoption of the child or to terminate his parental rights. Said affidavit may be given to or obtained by the mother of the child, any agency or person providing adoption services to the mother of the child or to the child, or any agency or attorney representing the prospective adoptive parents of the child, and the affidavit may be signed either before or after the birth of the child. Provided that the affidavit shall be a sworn statement signed by the alleged father, who is at least 16 years of age, witnessed by two persons eighteen (18) years of age or older, and verified before a person authorized to take oaths. Said affidavit shall identify the child, the child's date of birth or estimated date of birth, the mother, and the alleged father, and state that the alleged father is disclaiming any interest in the child voluntarily and free of coercion or duress, with knowledge of the legal consequences of said disclaimer and waiver. Said affidavit and waiver can be used in any proceeding in which the affiant attempts to establish an interest or parental rights to the child. The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the

child. In the absence of the father's affirmative request for notice of future proceedings or his registration with the Oklahoma Centralized Paternity Registry, pursuant to Section 55.1 of this title, proof of receipt of the affidavit and waiver form by the father, and a failure of the father to respond to the request for affidavit or waiver within thirty (30) days of receipt, would constitute a legal presumption of waiver of claim of interest in the child, and a waiver of notice to future proceedings. The father's affirmative request for notice of future proceedings or notice of his registration with the Oklahoma Centralized Paternity Registry shall be given to the person or agency requesting the affidavit and waiver within thirty (30) days of his receipt of the request for affidavit or waiver.

A determination that the consent of the father or putative father of a child born out of wedlock to the adoption of the child is not required shall not, by itself, act to relieve such father or putative father of his obligation to provide for the support of the child as otherwise required by law; or

4. A parent who is entitled to custody of a child and has abandoned the child; or

5. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. such condition is caused by or contributed to by acts or omissions of his parent, and
- b. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to

determine if the condition has been corrected. The court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; or

6. A parent who has been convicted in a criminal action pursuant to the provisions of Sections 843, 845, 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or who has either:

- a. physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or
- b. physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or

7. A parent who has been convicted in a criminal action of having caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

8. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. the parent has been sentenced to a period of incarceration of not less than ten (10) years, and
- b. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past; or

9. A parent of a child who is deprived, as defined by Section 1101 of this title, if:

- a. the parent has a mental illness or mental deficiency, as defined by paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- b. the continuation of parental rights would result in harm or threatened harm to the child, and
- c. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 60.7, is amended to read as follows:

Section 60.7 A. Prior to a court hearing on a petition for adoption without the consent of a parent or parents, as provided for in Section 60.6 of this title, the consenting parent, legal guardian, or person having legal custody of the child to be adopted shall file an application stating the reason that the consent of the other parent or parents is not necessary. The application shall be heard by the court and an order entered thereon in which said child is determined to be eligible for adoption pursuant to the provisions of Section 60.6 of this title.

B. Prior to a hearing on the application, notice shall be given the parent whose consent is alleged to be unnecessary. The notice of the application shall contain the name of each child for whom application for adoption is made, the date for hearing on the application, and the reason that said child is eligible for adoption without the consent of said parent. Notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than ten (10) days prior to the hearing. If said parent resides outside of the county, said notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than fifteen (15) days prior to the hearing. If the location of said parent is not known and this fact is attested to by affidavit of the consenting parent, legal guardian, or person having legal custody of the child, notice by publication shall be given by publishing notice one time in a newspaper qualified as a legal newspaper, pursuant to the laws relating to service of notice by publication, in the county where the petition for adoption is filed. The publication shall not be less than fifteen (15) days prior to the date of the hearing.

C. The provisions of this section shall not be construed to require notice to a parent whose parental rights have been previously terminated pursuant to Sections 1130, 1131 or 29.1 of this title, or to parents who have waived notice or executed an

affidavit disclaiming interest in the child, pursuant to
subparagraph e of paragraph 3 of Section 60.6 of this title.

SECTION 3. This act shall become effective November 1, 1995.

Passed the House of Representatives the 8th day of March, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate