STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2006 By: Roach

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 21.3, as last amended by Section 27, Chapter 396, O.S.L. 1999, and as renumbered by Section 30, Chapter 396, O.S.L. 1999, Section 27, as last amended by Section 28, Chapter 396, O.S.L. 1999, and as renumbered by Section 30, Chapter 396, O.S.L. 1999 and Section 24, as last amended by Section 1, Chapter 342, O.S.L. 1998 (10 O.S. Supp. 1999, Sections 21.3, 21.4 and 24), which relate to the care and custody of children; providing for custody pending certain hearings; requiring transitional periods; granting parental authority to certain persons; providing for relative guardianship; providing for procedures; providing for effect of orders; providing for certain authority; providing for termination of order; providing for appointment of certain guardians and payment of fees; amending 10 O.S. 1991, Section 403, as last amended by Section 2, Chapter 233, O.S.L. 1999 (10 O.S. Supp. 1999, Section 403), which relates to the Oklahoma Child Care Facilities Act; removing certain exceptions; amending Section 20, Chapter 366 O.S.L. 1997, as amended by Section 17, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7505-1.2), which relates to the Oklahoma Adoption Code; adding to list of persons which may request appointment of a guardian ad litem for the child; amending 30 O.S. 1991, Section 2-108, which relates to the Oklahoma Guardianship and Conservatorship Act; providing for payment of child support; requiring provision in certain orders; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 21.3, as last amended by Section 27, Chapter 396, O.S.L. 1999, and as renumbered by Section 30, Chapter 396, O.S.L. 1999 (10 O.S. Supp. 1999, Section 21.3), is amended to read as follows:

Section 21.3 A. No person, other than a relative related to the child within the third degree, may accept the permanent care and

custody of a child, except in accordance with a decree of a court of competent jurisdiction or the Oklahoma Children's Code, the Oklahoma Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.

B. A relative related to a child within the third degree may accept the permanent care and custody of the child:

1. Pursuant to a written relinquishment by a parent or parents of a child acknowledged before a court of competent jurisdiction which identifies the child or children relinquished;

2. In accordance with the provisions of the Oklahoma Children's Code, the Oklahoma Guardianship and Conservatorship Act, Section 3 of this act or the Oklahoma Adoption Code; or

3. ~~If~~ Without a court order, if the child has been abandoned by a parent or parents of a child in the physical custody of such relative pursuant to the provisions of this section.

C. 1. A child who has been abandoned in the physical custody of such relative by a parent or parents of the child may not be reclaimed or recovered by the parent or parents who abandoned the child except through order of a court of competent jurisdiction or by release of the child by such relative.

2. In determining custody of the child pursuant to the provisions of this subsection, the court shall base its findings on the best interests of the child and:

a. the duration of the abandonment and integration of the child into the home of the relative,

b. the preference of the child if the child is determined to be of sufficient maturity to express a preference,

c. the mental and physical health of the child, and

d. such other factors as are necessary in the particular circumstances.

3. During the pending of any action to determine the custody of a child pursuant to this section, unless it is determined not to be

in the best interests of the child, the child shall remain in the custody of the relative related to the child within the third degree.

4. If the court orders the child be returned to the parents of the child, the court shall provide for a transitional period for the return in the best interest of the child.

D. A relative related to the child within the third degree accepting permanent care and custody of a child pursuant to this section shall have the same authority as a parent to consent on behalf of a child or on behalf of a parent of the child in all cases except that such relative may not consent to an adoption of the child.

E. The provisions of this section shall not apply to the acceptance of the permanent care and custody of a child by one parent of the child from the other parent of the child.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 27, as last amended by Section 28, Chapter 396, O.S.L. 1999, and as renumbered by Section 30, Chapter 396, O.S.L. 1999 (10 O.S. Supp. 1999, Section 21.4), is amended to read as follows:

Section 21.4 A. No person may surrender, assign, permanently relinquish, or otherwise transfer to another the person’s rights and duties with respect to the permanent care and custody of a child, other than to a relative related to the child within the third degree, except in accordance with an order of the court of competent jurisdiction or pursuant to the Oklahoma Children's Code, the Oklahoma Adoption Code, the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Child Care Facilities Licensing Act.

B. A parent or parents of a child may surrender, assign, permanently relinquish or otherwise transfer such parent’s rights and duties with respect to the permanent care and custody of a child to a relative of the child within the third degree:

1. Pursuant to a written relinquishment acknowledged before a court of competent jurisdiction which identifies the child or children relinquished;

2. In accordance with the provisions of the Oklahoma Children's Code, the Oklahoma Guardianship and Conservatorship Act, Section 3 of this act or the Oklahoma Adoption Code; or

3. ~~By~~ Without a court order, by abandoning the child in the physical custody of such relative pursuant to the provisions of this section.

C. 1. A child who has been abandoned in the physical custody of such relative may not be reclaimed or recovered by the parent or parents who abandoned the child except through order of a court of competent jurisdiction or by release of the child by such relative.

2. In determining custody of the child pursuant to the provisions of this subsection, the court shall base its findings on the best interests of the child and:

a. the duration of the abandonment and integration of the child into the home of the relative,

b. the preference of the child if the child is determined to be of sufficient maturity to express a preference,

c. the mental and physical health of the child, and

d. such other factors as are necessary in the particular circumstances.

3. During the pending of any action to determine the custody of a child pursuant to this section, unless it is determined not to be in the best interests of the child, the child shall remain in the custody of the relative related to the child within the third degree.

4. If the court orders the child be returned to the parents of the child, the court shall provide for a transitional period for the return in the best interests of the child.

D. A relative related to the child within the third degree accepting permanent care and custody of a child pursuant to this section shall have the same authority as a parent to consent on behalf of a child or on behalf of a parent of the child in all cases except that such relative may not consent to an adoption of the child.

E. The provisions of this section shall not apply to the surrender, assignment, relinquishment, or other transfer of a child by one parent of the child to the other parent of the child.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.5 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A juvenile court may order a child's care and custody transferred, subject to such parental rights and responsibilities as determined by the court and upon the written consent of the parents of the child to a kinship custodian pursuant to the provisions of this section.

1. Prior to the entry of an order transferring the custody of a child, the juvenile court shall receive an investigation and report regarding the background and home of the prospective kinship custodian. Such investigation and report of the prospective kinship custodian shall be made pursuant to the requirements of the Oklahoma Adoption Act. The Department of Human Services shall not be required by the court to make the home study and report as specified by this paragraph.

2. Upon the entry of an order providing for the transfer of the care and custody of a child, the order shall remain in full force and effect until:

   a. the child reaches the age of eighteen (18) years, or

b. the parent who consented to the transfer of the care and custody of the child petitions the court for the recovery of the child and the court finds after an evidentiary hearing that it is in the best interests of the child that custody of the child be returned to the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Children's Code, or

c. the attorney for the child or kinship custodian petitions the court for modification of the order transferring care and custody and the court finds after an evidentiary hearing that it is in the best interests of the child for the order to be modified.

3. An order appointing a kinship custodian shall award custody of the child to the kinship custodian. The kinship custodian of a child shall have the authority as specified by the court order to consent on behalf of the child except that a kinship custodian may not consent to an adoption of the child.

4. For purposes of this subsection, "kinship custodian" means a person related by blood, marriage, adoption or by emotional tie or bond to the child.

B. 1. A juvenile court may order a child's care and custody transferred to a relative related to the child within the third degree.

2. The relative related to the child within the third degree may file a petition with the juvenile court to be appointed as guardian for the child. The petition shall allege that:

a. more than twelve (12) months have passed since the child was placed or left in the custody of the

relative pursuant to Sections 21.3 and 21.4 of Title 10 of the Oklahoma Statutes,

b. the parents of the child are presently and for the foreseeable future unable to provide proper and adequate care for the child or are unavailable, and

c. it would be in the best interests of the child for the petition to be granted.

3. Notice of the petition and a copy of the petition shall be served upon the parties and the guardian ad litem of the child if available.

4. If the juvenile court finds that the elements of the petition have been proven based on clear and convincing evidence, the court shall grant the petition.

5. An order appointing the relative related to the child within the third degree as a guardian shall award custody of the child to the relative. The guardian shall have the same authority as a parent to consent on behalf of a child, except that the guardian may not consent to an adoption of the child.

6. Upon the entry of an order providing for the transfer of the care and custody of a child to a relative related to the child within the third degree, the order shall remain in full force and effect until:

a. the child reaches the age of eighteen (18) years, or

b. the court finds after evidentiary hearing:

(1) the child has been abused while in the care and custody of the relative, and

(2) it is in the best interests of the child that custody of the child be returned to the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act or the Oklahoma Children's Code, or

c. an attorney for the child or the relative petitions the court for modification of the order transferring permanent care and custody to the relative and the court finds after an evidentiary hearing that it is in the best interests of the child for the order to be modified.

4. Except as otherwise provided by the court, the appointment of a relative shall not affect or impair the visitation rights of a parent.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 24, as last amended by Section 1, Chapter 342, O.S.L. 1998 (10 O.S. Supp. 1999, Section 24), is amended to read as follows:

Section 24. A. 1. When it appears to the court that a minor or the minor's parent or legal guardian desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel.

2. In any case in which it appears to the court that there is a conflict of interest between a parent or legal guardian and a child so that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or legal guardian; provided, that in all counties having county indigent defenders, the county indigent defenders assume the duties of representation in proceedings such as above.

3. In no case shall the court appoint counsel to represent a grandparent or other relative within the third degree of a minor, unless the grandparent or other relative is the duly appointed guardian of the minor or the court finds:

a. that the grandparent or other relative is functioning as the guardian of the minor, or

b. that the appointment of counsel for the grandparent or other relative is in the best interests of the child.

B. In all cases of juvenile delinquency proceedings and appeals, adult certification proceedings and appeals, reverse certification proceedings and appeals, youthful offender proceedings and appeals and any other proceedings and appeals pursuant to the Oklahoma Juvenile Code, except mental health proceedings and appeals and in-need-of-supervision proceedings and appeals, other than in counties where the county indigent defenders are appointed, the court shall, where counsel is appointed and assigned, allow and direct to be paid by the Oklahoma Indigent Defense System, a reasonable and just compensation to the attorney or attorneys for such services as they may render. In all other cases pursuant to this title and in juvenile mental health proceedings and appeals and in-need-of-supervision proceedings and appeals, except in counties where county indigent defenders are appointed, the court shall, if counsel is appointed and assigned, allow and direct to be paid from the local court fund, a reasonable and just compensation to the attorney or attorneys for such services as they may render; provided that any attorney appointed pursuant to this subsection shall not be paid a sum in excess of One Hundred Dollars ($100.00) for services rendered in preliminary proceedings, and such compensation shall not exceed Five Hundred Dollars ($500.00) for services rendered during trial and not to exceed One Hundred Dollars ($100.00) for services rendered at each subsequent post-disposition hearing.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 403, as last amended by Section 2, Chapter 233, O.S.L. 1999 (10 O.S. Supp. 1999, Section 403), is amended to read as follows:

Section 403. A. The provisions of the Oklahoma Child Care Facilities Licensing Act shall not apply to:

1. Care provided in a child's own home or by relatives;

2. Informal arrangements which parents make with friends or neighbors for the occasional care of their children;

3. Programs in which school-aged children are participating in home-schooling;

4. Programs operated during typical school hours by a public school district;

5. Programs operated during typical school hours by a private school that offers elementary education in grades kindergarten through third grade;

6. Summer youth camps for children at least five (5) years of age that are accredited by the American Camping Association or other national standard-setting agency or church camp accreditation program;

7. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;

8. A program of specialized activity or instruction for children that is not designed or intended for child care purposes including, but not limited to, scouts, 4-H clubs and summer resident youth camps, and single-activity programs such as academics, athletics, gymnastics, hobbies, art, music, dance and craft instruction;

9. Nursery schools, kindergartens or other facilities the purposes of which are primarily educational, recreational or medical, and that operate part-day child care programs which provide care and supervision for eight (8) or more children for fifteen (15) or fewer hours per week;

10. Facilities whose primary purpose is medical treatment;

11. Day treatment programs and maternity homes operated by a licensed hospital; or

12. Juvenile facilities certified by the Office of Juvenile Affairs or certified by any other state agency authorized by law to license such facilities.

B. ~~1.~~ The provisions of the Oklahoma Child Care Facilities Licensing Act shall be equally incumbent upon all private and public child care facilities.

~~2. Any institution furnishing full-time care for children for ten (10) years prior to May 23, 1963, shall, upon written notification to the Department of Human Services, be exempt from the provisions of the Oklahoma Child Care Facilities Licensing Act, if it is not receiving any state or federal funds for furnishing food, clothing, shelter, or upkeep for such children.~~

~~3. Any institution being operated by a war veterans' organization and furnishing full-time care for children as of May 23, 1963, shall be exempt from the provisions of the Oklahoma Child Care Facilities Licensing Act, regardless of whether it is receiving state or federal funds.~~

SECTION 6. AMENDATORY Section 20, Chapter 366, O.S.L. 1997, as amended by Section 17, Chapter 415, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7505-1.2), is amended to read as follows:

Section 7505-1.2 A. 1. In a proceeding pursuant to the Oklahoma Adoption Code, the court shall appoint an attorney for a minor in a contested proceeding pursuant to the Oklahoma Adoption Code and may appoint an attorney for a child in an uncontested proceeding.

2. The attorney shall be charged with the representation of the child. To that end, the attorney shall make such further investigation as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court, and participate further in the proceedings to the degree appropriate for adequately representing the child.

3. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

4. Upon approval of the court, the attorney may be allowed a reasonable fee for services provided by this section.

B. 1. The court may appoint a separate guardian ad litem for the minor in a contested proceeding and shall appoint a separate guardian ad litem upon the request of a party, the minor, the attorney of the minor ~~or~~, either birth parent, prospective adoptive parent, a person or agency having physical or legal custody of the child or petitioning agency.

2. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the minor.

3. The guardian ad litem shall be appointed to objectively advocate on behalf of the minor and act as an officer of the court to investigate all matters concerning the best interests of the minor. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

a. review relevant documents, reports and other information,

b. meet with and/or observe the child,

c. consider the child's wishes, as appropriate,

d. interview parents, caregivers and others with knowledge relevant to the case,

e. advocate for the minor's best interests by participating in appropriate aspects of the case and advocating for appropriate community and other services when necessary,

f. maintain the confidentiality of information related to the case,

g. monitor the minor's best interests throughout any judicial proceeding, and

h. advise the court of his or her findings and recommendations, if any, and the facts upon which they are based.

4. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the minor's parent or other custodian, as specified by the court, subject to such protective orders regarding identifying information as the court deems advisable.

5. Any person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

SECTION 7. AMENDATORY 30 O.S. 1991, Section 2-108, is amended to read as follows:

Section 2-108. A. If any minor, having a parent or parents living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such parent or parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of the property of the minor in whole or in part, as judged reasonable and as directed by the court. The charges therefore may be allowed accordingly in the settlement of the accounts of the guardian of the minor.

B. 1. Any order appointing a guardian of the minor who has a parent living or other person legally responsible for the support of the child shall:

a. provide for the payment of child support by the parent or other responsible party,

b. contain an income assignment provision pursuant to Section 115 of Title 43 of the Oklahoma Statutes.

2. The provisions of this subsection shall not apply to parents whose rights and responsibilities have been terminated to the child unless the termination order requires payment of child support.

3. Any guardianship or conservatorship for a minor in existence on or created on or after December 1, 2000, shall comply with the provisions of this subsection.

SECTION 8. This act shall become effective November 1, 2000.

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