

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2614

By: Winchester

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Sections 7501-1.3 and 7505-4.2, which relate to the Oklahoma Adoption Code; modifying definition; clarifying certain grounds for not obtaining consent from certain persons; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7501-1.3, is amended to read as follows:

Section 7501-1.3 As used in the Oklahoma Adoption Code:

1. "Abandonment" includes, but is not limited to, the following:
  - a. the parent has left the minor alone or in the care of another who is not the parent of the minor without identifying the minor or furnishing a means of identification for the minor, the whereabouts of the parents are unknown, and the minor's identity cannot be ascertained by the exercise of reasonable diligence,
  - b. the parent has voluntarily left the minor alone or in the care of another who is not the parent of the minor and expressed a willful intent by words, actions, or omissions not to return for the minor,
  - c. the parent fails to maintain a substantial and positive relationship with the minor for a period of six (6) consecutive months out of the last fourteen

(14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this section, "establish and/or maintain a substantial, positive relationship" includes but is not limited to:

- (1) frequent and regular contact with the minor through frequent and regular visitation or frequent, regular communication to or with the minor, and
- (2) exercising parental rights and responsibilities. Incidental or token visits or communications shall not be sufficient to establish or maintain a substantial and positive relationship with the minor.

The term "abandonment" shall not include when a parent has relinquished a minor to or placed the minor in the custody of a licensed child-placing agency or other court-appointed individual;

2. "Adoptee" means an individual who is adopted or is to be adopted;

3. "Adult" means an individual who has attained eighteen (18) years of age;

4. "Minor" means any person who has not attained the age of eighteen (18) years;

5. "Child-placing agency" means any child welfare agency currently licensed and in good standing pursuant to the Oklahoma Child Care Facilities Licensing Act and authorized to place minors for adoption;

6. "Contested proceeding" means any proceeding pursuant to the Oklahoma Adoption Code in which an interested party enters an appearance to contest the petition;

7. "Department" means the Department of Human Services;

8. "Direct placement adoption" means any adoption in which the minor is not placed for adoption by the Department of Human Services or a child-placing agency;

9. "Guardian" means an individual, other than a parent, appointed by a court to be the guardian of the person of a minor;

10. "Parent" means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term "parent" does not include an individual whose parental relationship to a child has been terminated;

11. "Permanent relinquishment" means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Human Services or any person with the assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption;

12. "Putative father" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception;

13. "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia; and

14. "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-4.2, is amended to read as follows:

Section 7505-4.2 A. Consent to adoption is not required from a putative father of a minor who, at the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title, fails to prove he is the father of the child.

B. Consent to adoption is not required from a parent who, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of a child or a petition to terminate parental rights pursuant to Section 7505-2.1 of this title, has willfully failed, refused, or neglected to contribute to the support of such minor:

1. In substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support; or

2. According to such parent's financial ability to contribute to such minor's support if no provision for support is provided in an order.

~~The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.~~

C. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if:

1. The minor is placed for adoption within ninety (90) days of birth, and the father or putative father fails to show he has financially supported the child and has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy may in and of itself be grounds for finding the minor eligible for adoption without such father's consent; or

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has financially supported the child and has exercised parental

rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the minor to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption without such father's consent.

~~The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.~~

D. In any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a minor or made sufficient attempts to exercise parental rights and duties toward the minor prior to the receipt of notice.

E. Consent to adoption is not required from a parent or putative father who waives in writing his right to notice of the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title.

F. Consent to adoption is not required from a parent or putative father who fails to appear at the hearing provided for in Section 7505-2.1 or 7505-4.1 of this title if all notice requirements contained in or pursuant to such sections have been met.

G. Consent to adoption is not required from a parent who is entitled to custody of a minor and has abandoned the minor.

H. 1. Consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive

relationship with a minor for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of the child.

2. In any case where a parent of a minor claims that prior to the receipt of notice of the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the minor by the custodian of the minor, such parent shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to the receipt of such notice.

3. For purposes of this subsection, "fails to establish and/or maintain a substantial and positive relationship" means the parent:

- a. has not maintained frequent and regular contact with the minor through frequent and regular visitation or frequent and regular communication to or with the minor, or
- b. has not exercised parental rights and responsibilities.

I. Consent to adoption is not required from a parent who has been convicted in a criminal action pursuant to the provisions of Sections 7102 and 7115 of this title and Sections 1021.3, 1111 and 1123 of Title 21 of the Oklahoma Statutes or who has either:

1. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse that is heinous or shocking to the court or that the minor or sibling of such minor has suffered severe harm or injury as a result of such physical or sexual abuse; or

2. Physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse subsequent to a previous finding that such

parent has physically or sexually abused the minor or a sibling of such minor or failed to protect the minor or a sibling of such minor from physical or sexual abuse.

J. Consent to adoption is not required from a parent who has been convicted in a criminal action of having caused the death of a sibling of the minor as a result of the physical or sexual abuse or chronic neglect of such sibling.

K. Consent to adoption is not required from a parent if the parent has been sentenced to a period of incarceration of not less than ten (10) years and the continuation of parental rights would result in harm to the minor 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 minor; the evidence of abuse or neglect of the minor or siblings of the minor by the parent; and the current relationship between the parent and the minor and the manner in which the parent has exercised parental rights and duties in the past.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

L. Consent to adoption is not required from:

1. A parent who 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;

2. The continuation of parental rights would result in harm or threatened harm to the minor; and

3. 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.

M. Consent to adoption is not required from a putative father who has been served with a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title and who returns the form to the Paternity Registry of the Department of Human Services or agency or attorney who served him explicitly waiving a right to notice and legal rights to the minor or who fails to return the form pursuant to Section 7503-3.1 of this title in time for the form to be received by the Paternity Registry of the Department of Human Services or the agency or attorney who served him within thirty (30) days from the date the Notice of Plan for Adoption was served upon the putative father.

N. Consent to adoption is not required from:

1. An individual who has permanently relinquished parental rights and responsibilities to the minor pursuant to the Oklahoma Adoption Code;

2. An individual whose parental relationship to a minor has been legally terminated or legally determined not to exist; or

3. The personal representative of a deceased parent's estate.

O. Consent to adoption is not required from a parent who has voluntarily placed a minor child in the care of a licensed child care institution or child-placing agency, if the minor has remained in out-of-home care for eighteen (18) months or more, and the parent has willfully failed to substantially comply for twelve (12) consecutive months out of the fourteen-month period immediately preceding the filing of the petition for adoption with a reasonable written plan of care. Provided, the willful failure to comply with the written plan of care may not be a ground for adoption without consent unless the plan of care, at the time it was initially executed by the parent, contained notice that failure to substantially comply constitutes grounds for adoption without

consent. The reasonableness of the plan shall be a question of fact to be determined by the court.

SECTION 3. 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.

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