# SENATE CHAMBER

**STATE OF OKLAHOMA**

DISPOSITION BY SENATE

**FLOOR AMENDMENT**

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No._____

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(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1765, Page 1, Line 10 ½ ,

as follows:

By inserting a new SECTION 1 to read as follows, by renumbering subsequent sections, and by amending the title to conform.

"SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.5, is amended to read as follows:

Section 21.5 A. 1. A judge of a district court ~~who has juvenile docket responsibility~~ may order a child's permanent care and custody transferred to an adult relative of the child within the third degree pursuant to the provisions of this subsection, upon the written consent of both parents of the child or upon the consent of one parent only if:

a. the other parent is deceased,

b. the other parent has been determined by a court of law to be incompetent or incapacitated,

c. the whereabouts or identity of the other parent is unknown. This fact shall be attested to by affidavit of the consenting parent,

d. the other parent, who is eighteen (18) years of age or older, has signed a statement consenting to the transfer, executed before a notary public,

e. the parental rights of the other parent have been terminated,

f. the other parent has been or is found by the court of law to be unfit or unable to exercise parental rights and responsibility for the child based upon situations enumerated in Section 7006-1.1 of Title 10 of the Oklahoma Statutes,

g. the other parent is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

h. the other parent has abandoned the child as such term is defined by Section 21.2 of Title 10 of the Oklahoma Statutes, or is determined by the court to be otherwise unfit to assume custody of the child for any other reason.

2. To be appointed as a relative guardian for the child, an adult relative related to the child within the third degree must file a petition on a form developed pursuant to the provisions of this section with the judge.

3. Prior to the entry of an order transferring the custody of a child, the judge ~~shall~~ may receive a home study regarding the background and home of the prospective relative guardian by a person qualified by training and experience authorized by the court. If the judge does not receive a home study, a criminal background check and a child abuse registry check pursuant to Section 7505-5.3 of this title shall be conducted for the prospective relative guardian and other household members eighteen (18) years of age and older.

4. Upon the entry of a court order providing for the transfer of the permanent 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,

b. the child marries or is legally emancipated,

c. the judge 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 a parent or the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code or this section,

d. the parent who consented to the transfer of the care and custody of the child petitions the judge for the recovery of the child and the judge 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 custody of the child be given to another person pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code, or the provisions of this section,

e. the attorney for the child or relative guardian petitions the judge for modification of the court 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 and the child be returned to the parents or custody of the child be given to another person pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code, or pursuant to the provisions of this section,

f. the child is adopted, or

g. the guardianship is otherwise terminated pursuant to Section 4-803 of Title 30 of the Oklahoma Statutes.

5. An order providing for the transfer of the permanent care and custody of a child:

a. shall require that the placement be reviewed within one (1) year after transfer and may require the person to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review,

b. shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child,

c. unless periodic reviews are required, may be closed by the judge, provided the order transferring the permanent care and custody of the child shall remain in full force and effect subject to the provisions of paragraph 4 of this subsection, and

d. shall include conditions for the care, treatment, education and welfare of the child.

6. A court order appointing an adult relative guardian shall award custody of the child to the relative guardian subject only to such parental rights and responsibilities as determined by the judge. The adult relative guardian of a child shall have the authority as specified by the order to consent on behalf of the child in all cases except that a relative guardian may not consent to an adoption of the child.

B. 1. A judge of a district court ~~who has juvenile docket responsibility~~ may order a child's permanent care and custody transferred to an adult relative guardian related to the child within the third degree without the consent of the parent or parents pursuant to the provisions of this subsection.

2. To be appointed as a relative guardian for the child, an adult relative related to the child within the third degree must file a petition on a form developed pursuant to the provisions of this section with the judge. The petition shall allege that:

a. a parent or the parents of the child have placed the child with the relative pursuant to Sections 21.3 and 21.4 of Title 10 of the Oklahoma Statutes and have abandoned the child,

b. the child is currently residing with the relative and there exists a loving and emotional tie between the child and the relative,

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

d. the child has no assets or limited assets, and

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

3. Prior to the entry of an order appointing an adult relative guardian, the court ~~shall~~ may receive a home study regarding the background and home of the prospective relative guardian by a person qualified by training and experience authorized by the court.

4. If the judge finds that the elements of the petition have been proven based on a preponderance of the evidence, the judge shall grant the petition.

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

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

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

b. the child is married or is legally emancipated,

c. the judge 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 a parent or the parents or other persons pursuant to the Oklahoma Guardianship and Conservatorship Act, the Oklahoma Children's Code or this section,

d. an attorney for the child or the relative petitions the judge for modification of the order transferring permanent care and custody to the relative and the judge finds after an evidentiary hearing that it is in the best interests of the child for the order to be modified and the child returned to the parents or other persons pursuant to the Oklahoma Guardianship and Conversatorship Act, the Oklahoma Children's Code, or this section,

e. the child is adopted, or

f. the guardianship is otherwise terminated pursuant to Section 4-803 of Title 30 of the Oklahoma Statutes.

7. An order appointing a relative guardian:

a. shall require that the placement be reviewed within one (1) year after transfer and may require the relative guardian to whom custody is transferred to submit any records or reports the court deems necessary for purposes of such review,

b. shall not require periodic reviews by the court thereafter if the parties agree with the assent of the court that such reviews are not necessary to serve the best interests of the child, unless periodic reviews are required by the court,

c. unless periodic reviews are required, may be closed by the judge, provided the order transferring care and custody to a relative guardian shall remain in full force and effect subject to the provisions of paragraph 6 of this subsection, and

d. shall include conditions for the care, treatment, education and welfare of the child.

C. 1. Before making an appointment pursuant to this section, the court must cause notice of a hearing on the petition for appointment to be given in the form required by the court to the minor, if the minor has attained the age of fourteen (14) as of the date the petition is filed. The court shall also cause notice to be sent to the then-living parents of the minor.

2. a. Such notice shall be mailed to each person, entitled to notice pursuant to this subsection, at that person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the court for hearing on the petition. Provided the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances, and

b. If the identity or whereabouts of a parent is unknown, the court must determine whether the parent can be identified or located. Following an inquiry, if the court finds that the identity or whereabouts of the parent cannot be ascertained, and this fact is attested to by affidavit of the petitioner, it shall order that notice be given by publication. The notice shall be published once pursuant to the laws relating to the service of notice by publication in the county in which the petition for relative guardianship is filed, and the hearing shall not be held for at least fifteen (15) days after publication of the notice.

D. After a petition has been filed for a proceeding, pursuant to this section, the petitioner may request the court to issue a temporary order regarding child custody, child support, visitation or other relief proper in the circumstance.

E. The venue for a proceeding pursuant to this section is in the district court where the child resides. If the court finds that in the interest of justice a proceeding should be conducted in another court of this state, the court may transfer the proceeding to the other court.

F. 1. An appointment of a relative guardian made pursuant to this section is subject to only Article 1 of the Oklahoma Guardianship and Conservatorship Act and Sections 4-501, 4-503, 4-706, 4-707, 4-801, 4-802, 4-901 and 4-902 of Title 30 of the Oklahoma Statutes.

2. If the court determines that it is in the best interests of the child, the court may require the establishment of a guardianship or conservatorship pursuant to Title 30 of the Oklahoma Statutes.

3. The clerk of the district court in which the application for a relative guardianship is filed shall collect as court costs a fee of Fifty Dollars ($50.00).

G. 1. Any order appointing a relative guardian of a minor pursuant to this section who has a parent living or legally responsible for the support of the child shall:

a. provide for the payment of child support by the parent, and

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.

H. The Administrative Office of the Courts shall prepare a handbook for distribution to the district courts for appointments made pursuant to this section. The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to relative guardians made pursuant to this section. In addition, the Office of the Administrative

Director of the Courts shall develop the forms and procedures necessary to effectuate this section. The Office of the Administrative Director of the Courts shall make such forms and handbook available to the public through the offices of the clerks of the district courts in this state, in the local offices of the Department of Human Services, and such other locations deemed necessary by the Administrator."

Submitted by:

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Senator Constance Johnson

Johnson (Constance)-TEK-FA-SB1765
6/13/2015 2:44 AM