

3 ENGROSSED

4 House Bill No. 2538

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2538 - By: PETERSON (Pam) of the House and  
7 MAZZEI of the Senate.

8 An Act relating to adoption; amending 10 O.S. 2001, Section  
9 7505-2.1, which relates to adoption of minors; clarifying  
10 certain term; adding certain person for applicability of  
11 act; requiring certain waiver be in writing; amending 21  
12 O.S. 2001, Sections 865 and 866, which relate to trafficking  
13 in children; adding certain definitions; modifying certain  
14 definition; adding certain conduct considered to be the  
15 crime of trafficking in children; providing penalty;  
16 classifying person subject to certain compliance; providing  
17 an effective date; and declaring an emergency.

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

19 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7505-2.1, is  
20 amended to read as follows:

21 Section 7505-2.1 A. 1. Prior to the filing of a petition for  
22 adoption, ~~an~~ a child-placing agency, attorney, or prospective  
23 adoptive parent to whom a ~~mother~~ parent having legal custody has  
24 executed a consent to adoption or has permanently relinquished a  
25 minor born out of wedlock may file a petition for the termination of  
26 the parental rights of a putative father or a parent of the child.  
27 The petition shall be filed with the district court of the county in  
28 which the relinquishment was executed or in the county in which the

1 putative father, a parent, the petitioner, or the minor resides at  
2 the time of the filing of the petition.

3 2. The affidavit of expenses required by subsection A of  
4 Section 7505-3.2 of this title is not required to be attached to a  
5 petition filed pursuant to this section, nor must it be filed prior  
6 to issuance of an order terminating parental rights entered in a  
7 proceeding brought under this section.

8 B. 1. Notice of the hearing on the petition to terminate  
9 parental rights and a copy of the petition shall be served upon ~~the~~  
10 such putative father or a parent in the same manner as summons is  
11 served in civil cases, not less than fifteen (15) days prior to the  
12 hearing.

13 2. The notice shall contain the name of the putative father or  
14 parent, or if unknown, the name of the minor, the date of birth of  
15 the minor, the date of the hearing, and the ground or grounds for  
16 which termination of parental rights is sought. The notice shall  
17 apprise the putative father or parent of his or her legal rights and  
18 shall include a clear statement that failure to appear at the  
19 hearing shall constitute a denial of interest in the minor which  
20 denial may result, without further notice of this proceeding or any  
21 subsequent proceeding, in the termination of his or her parental  
22 rights and the transfer of the ~~minor's~~ care, custody or guardianship  
23 of the minor or in the ~~minor's~~ adoption of the minor.

1           3. If the identity or whereabouts of a putative father or  
2 parent is unknown, the court must determine whether the putative  
3 father or parent can be identified or located. Following an inquiry  
4 pursuant to Section 7505-4.3 of this title, if the court finds that  
5 the identity or whereabouts of the putative father or parent cannot  
6 be ascertained, and this fact is attested to by affidavit of the  
7 consenting or permanently relinquishing ~~mother~~ person or the legal  
8 custodian or guardian of the child, it shall order that notice be  
9 given by publication and, if the identity is known, that a copy be  
10 mailed to the last-known address of the putative father or parent.  
11 The notice shall be published once pursuant to the laws relating to  
12 service of notice by publication, in the county in which the action  
13 to terminate parental rights is brought, and the hearing shall not  
14 be held for at least fifteen (15) days after publication of the  
15 notice. When notice is given by publication, the order terminating  
16 parental rights shall not become final for a period of fifteen (15)  
17 days from the date of the order.

18           4. A putative father or parent may waive ~~his~~ the right to  
19 notice pursuant to this section. The waiver ~~signed by the~~ putative  
20 ~~father~~ shall be in writing and shall include a statement affirming  
21 that the ~~putative father~~ person signing the waiver understands that  
22 the waiver shall constitute grounds for the termination of the  
23 parental rights of such ~~putative father~~ person pursuant to the

1 provisions of this section and Section 7505-4.2 of this title. A  
2 putative father or legal or biological father may also waive his  
3 right to notice pursuant to this section, by signing an  
4 extrajudicial consent pursuant to Section 7503-2.6 of this title, or  
5 by waiving notice on a form filed with the Paternity Registry of the  
6 Department of Human Services, or by failing to register with the  
7 Paternity Registry of the Department of Human Services after  
8 receiving a Notice of Plan for Adoption pursuant to Section 7503-3.1  
9 of this title.

10 C. When a putative father or parent appears at the hearing and  
11 desires counsel but is indigent and cannot for that reason employ  
12 counsel, the court shall appoint counsel. In all counties having  
13 county indigent defenders, the county indigent defenders shall  
14 assume the duties of the representation in such proceedings.

15 D. At the hearing on the petition to terminate parental rights  
16 brought pursuant to this section, the court may, if it is in the  
17 best interest of the minor:

18 1. Accept a permanent relinquishment or consent to adoption  
19 executed by the putative father or parent of the minor pursuant to  
20 Sections 7503-2.1, 7503-2.3 and 7503-2.4 of this title; or

21 2. Terminate any parental rights which the putative father or  
22 parent may have upon any of the grounds provided in Section 7505-4.2  
23 of this title for declaring a consent unnecessary.

1 E. 1. If the court at the hearing determines that the putative  
2 father is the biological father of the minor, that the adoption  
3 requires the consent of the putative father, that the putative  
4 father will not consent, and the court does not terminate the  
5 parental rights of the putative father or does not terminate the  
6 rights of the other parents, then the court shall schedule a  
7 separate hearing to issue an appropriate order for the legal and  
8 physical custody of the minor according to the best interests of the  
9 minor, if the court has jurisdiction to issue a custody order.  
10 Provided, no such hearing shall be scheduled if a preexisting  
11 custody order remains in effect.

12 2. The court shall certify that the child-placing agency or the  
13 attorney who filed the petition to terminate parental rights, the  
14 putative father, the parent, and any prospective adoptive parents  
15 have received notice of the date of the custody hearing at least  
16 fifteen (15) days prior to the date of the hearing. A ~~biological~~  
17 ~~mother~~ parent having legal custody who has signed a consent or  
18 permanent relinquishment must be served with notice of the date of  
19 the custody hearing, by the party who filed the petition for  
20 termination, in the same manner as summons is served in civil cases  
21 at least fifteen (15) days prior to the date of the hearing.

1           3. Upon motion to intervene, the court shall join any person or  
2 entity entitled to notice under paragraph 2 of this subsection who  
3 is not already a party to the proceeding.

4           4. At the hearing, the court may award custody to the  
5 biological mother, the biological father, the biological parents, if  
6 they are married, a parent, the prospective adoptive parent, or the  
7 Department of Human Services or other licensed child-placing agency,  
8 if the Department or agency had legal custody when the petition was  
9 filed, according to Section 21.1 of this title, in the best  
10 interests of the child.

11          5. The child shall be represented at this hearing by an  
12 attorney pursuant to Section 7505-1.2 of this title.

13          F. The court shall terminate the rights of a putative father or  
14 parent if ~~he~~ the person fails to appear at the hearing on the  
15 petition to terminate ~~his~~ parental rights or if ~~he has waived a~~ a  
16 waiver of notice pursuant to paragraph 4 of subsection B of this  
17 section has been filed with the court.

18          G. No order of the court shall be vacated, set aside, or  
19 annulled upon the application of any person who was properly served  
20 with notice in accordance with this section but failed to appear  
21 unless the applicant can establish by clear and convincing evidence  
22 that such failure to appear was due to unavoidable circumstances.  
23 Such application must be filed within ten (10) days of the date of

1 the hearing at which the applicant failed to appear. No order of  
2 the court shall be vacated, set aside, or annulled upon the  
3 application of any person who waived notice pursuant to paragraph 4  
4 of subsection B of this section.

5 H. A proceeding pursuant to this section for termination of  
6 parental rights shall be heard by the court without a jury.

7 I. An appeal may be taken from any final order, judgment, or  
8 decree rendered pursuant to this section to the Supreme Court by any  
9 person aggrieved thereby, in the manner provided for appeals from  
10 the court as provided in this subsection.

11 1. In an appeal concerning the termination of parental rights  
12 pursuant to this section, the ~~appellant's~~ designation of record by  
13 the appellant shall be filed in the trial court within ten (10) days  
14 after the date of the judgment. ~~Appellee's~~ The counter designation  
15 of record by the appellee shall be filed in the trial court ten (10)  
16 days after ~~appellant's~~ designation of record by the appellant is  
17 filed in the trial court.

18 2. All appeals of cases concerning the termination of parental  
19 rights pursuant to this section shall be initiated by filing a  
20 petition in error in the Supreme Court within thirty (30) days of  
21 the filing of the order, judgment, or decree appealed from. The  
22 record on appeal shall be completed within thirty (30) days from the  
23 filing of the petition in error. Any response to the petition in

1 error shall be filed within twenty (20) days from the filing of the  
2 petition in error.

3 3. The briefing schedule is established as follows:

- 4 a. ~~appellant's~~ brief in chief of the appellant shall be  
5 filed twenty (20) days after the trial court clerk  
6 notifies all parties that the record is complete and  
7 such notice has been filed in the office of the Clerk  
8 of the Supreme Court,
- 9 b. ~~appellee's~~ an answer brief of the appellee shall be  
10 filed fifteen (15) days after the ~~appellant's~~ brief in  
11 chief of the appellant is filed, and
- 12 c. ~~appellant's~~ a reply brief of the appellant may be  
13 filed within ten (10) days after the ~~appellee's~~ answer  
14 brief of the appellee is filed.

15 J. The pendency of an appeal shall not suspend the order of the  
16 district court regarding a minor, nor shall it remove the minor from  
17 the custody of that court or of the person, institution, or agency  
18 to whose care such minor has been committed, unless the Supreme  
19 Court shall so order.

20 K. Any appeal when docketed should have priority over all cases  
21 pending on said docket. Adjudication of the appeals and in any  
22 other proceedings concerning the relinquishment of the child or the

1 termination of parental rights pursuant to this section shall be  
2 expedited by the Supreme Court.

3 L. 1. The preadoption termination of parental rights pursuant  
4 to this section terminates the parent-child relationship, including  
5 the ~~parent's~~ right of the parent to the custody of the child and the  
6 ~~parent's~~ right of the parent to visit the child, the ~~parent's~~ right  
7 of the parent to control the ~~child's~~ training and education of the  
8 child, the necessity for the parent to consent to the adoption of  
9 the child, the ~~parent's~~ right of the parent to the earnings of the  
10 child, and the ~~parent's~~ right of the parent to inherit from or  
11 through the child. Provided, that this subsection shall not in any  
12 way affect the right of the child to inherit from the parent.

13 2. Termination of parental rights shall not terminate the duty  
14 of the putative father or parent whose rights have been terminated  
15 to support the child unless the court determines ~~he~~ the person is  
16 not the ~~biological father~~ parent. The duty of a putative father or  
17 parent to support ~~his~~ the minor child shall not be terminated until  
18 such time as a final decree of adoption has been entered.

19 SECTION 2. AMENDATORY 21 O.S. 2001, Section 865, is  
20 amended to read as follows:

21 Section 865. As used in this Act the terms hereinafter  
22 enumerated shall have the following meanings:

1        1. "Child" means an unmarried or unemancipated person under the  
2 age of eighteen (18) years;

3        2. "Child-placing agency" means any child welfare agency  
4 licensed pursuant to the Oklahoma Child Care Facilities Licensing  
5 Act and authorized to place minors for adoption;

6        3. "Birth parent" means a parent of a child being placed for  
7 adoption and includes, but is not limited to, a woman who is  
8 pregnant or who presents herself as pregnant and who is offering to  
9 place her child, born or unborn, for adoption;

10       4. "Person" means any natural person, corporation, association,  
11 organization, institution, or partnership;

12       5. "Department" means the Department of ~~Public Welfare~~ Human  
13 Services; and

14       6. "Foster home" means a home or other place, other than the  
15 home of a parent, relative within the fourth degree, or guardian of  
16 the child concerned, wherein a child is received for permanent care,  
17 custody and maintenance.

18       SECTION 3.        AMENDATORY        21 O.S. 2001, Section 866, is  
19 amended to read as follows:

20       Section 866. A. 1. The crime of trafficking in children is  
21 defined to consist of any of the following acts or any part thereof:

22            a.    the acceptance, solicitation, offer, payment or  
23                    transfer of any compensation, in money, property or

1 other thing of value, at any time, by any person in  
2 connection with the acquisition or transfer of the  
3 legal or physical custody or adoption of a minor  
4 child, except as ordered by the court or except as  
5 otherwise provided by Section 7505-3.2 of Title 10 of  
6 the Oklahoma Statutes,

7 b. the acceptance or solicitation of any compensation, in  
8 money, property or other thing of value, by any person  
9 or organization for services performed, rendered or  
10 purported to be performed to facilitate or assist in  
11 the adoption or foster care placement of a minor  
12 child, except by the Department of Human Services, a  
13 child-placing agency licensed in Oklahoma pursuant to  
14 the Oklahoma Child Care Facilities Licensing Act, or  
15 an attorney authorized to practice law in Oklahoma.  
16 The provisions of this paragraph shall not prohibit an  
17 attorney licensed to practice law in another state or  
18 an out-of-state licensed child-placing agency from  
19 receiving compensation when working with an attorney  
20 licensed in this state who is, or when working with a  
21 child-placing agency licensed in this state which is,  
22 providing adoption services or other services

1                   necessary for placing a child in an adoptive  
2                   arrangement,  
3           c.   bringing or causing to be brought into this state or  
4                   sending or causing to be sent outside this state any  
5                   child for the purpose of placing such child in a  
6                   foster home or for the adoption thereof without first  
7                   complying with the Interstate Compact on the Placement  
8                   of Children.  Provided, however, that this provision  
9                   shall have no application to the parent or guardian of  
10                  the child nor to a person bringing said child into  
11                  this state for the purpose of adopting the child into  
12                  such person's own family,  
13           d.   the solicitation or receipt of any money or any other  
14                  thing of value for expenses related to the placement  
15                  of a child for the purpose of an adoption by the birth  
16                  parent of the child who at the time of the  
17                  solicitation or receipt had no intent to consent to  
18                  eventual adoption ~~or~~,  
19           e.   the solicitation or receipt of any money or any other  
20                  thing of value for expenses related to the placement  
21                  of a child for adoption by a woman who knows she is  
22                  not pregnant but who holds herself out to be pregnant  
23                  and offers to place a child upon birth for adoption,

1       ~~e.~~ f.    the receipt of any money or any other thing of value  
2                   for expenses related to the placement of a child for  
3                   adoption by a birth parent who receives, from one or  
4                   more parties, an aggregate amount of One Thousand  
5                   Dollars (\$1,000.00) or more in total value without  
6                   first disclosing to each prospective adoptive parent,  
7                   child-placing agency, or attorney the receipt of these  
8                   expenses,

9       g.    advertising of services for compensation to assist  
10                   with or effect the placement of a child for adoption  
11                   or for care in a foster home by any person or  
12                   organization except by the Department of Human  
13                   Services, or a child-placing agency licensed in this  
14                   state. Nothing in this paragraph shall prohibit an  
15                   attorney authorized to practice law in Oklahoma from  
16                   the advertisement of legal services related to the  
17                   adoption of children, and

18       ~~f.~~ h.    (1) advertisements for and solicitation of a woman  
19                               who is pregnant to induce her to place her child  
20                               upon birth for adoption, except by a child-  
21                               placing agency licensed in this state or an  
22                               attorney authorized to practice law in Oklahoma.  
23                               Nothing in this section shall prohibit a person

1 from advertising to solicit a pregnant woman to  
2 consider adoptive placement with the person or to  
3 locate a child for an adoptive placement into the  
4 person's own home, provided that such person has  
5 received a favorable preplacement home study  
6 recommendation in accordance with Section 7505-  
7 5.1 of ~~this title~~ Title 10 of the Oklahoma  
8 Statutes, which shall be verified by the signed  
9 written statement of the person or agency which  
10 performed the home study, and provided that no  
11 money or other thing of value is offered as part  
12 of such an inducement except as ordered by the  
13 court or except as otherwise provided by Section  
14 7505-3.2 of Title 10 of the Oklahoma Statutes.

15 (2) Any person violating the provisions of this  
16 paragraph shall, upon conviction thereof, be  
17 guilty of a misdemeanor.

18 2. a. Except as otherwise provided by this subsection, the  
19 violation of any of the subparagraphs in paragraph 1  
20 of this subsection shall constitute a ~~Schedule G~~  
21 felony and shall be punishable by imprisonment of up  
22 to ten (10) years or a fine of up to Ten Thousand

1                   Dollars (\$10,000.00) per violation or both such fine  
2                   and imprisonment.

3                   b.   Prospective adoptive parents who violate subparagraph  
4                   a of paragraph 1 of this subsection, upon conviction  
5                   thereof, shall be guilty of a misdemeanor and may be  
6                   punished by a fine not to exceed Five Thousand Dollars  
7                   (\$5,000.00) per violation.

8                   c.   The violation of subparagraph c of paragraph 1 of this  
9                   subsection shall constitute a misdemeanor and may be  
10                   punishable by a fine not to exceed Five Thousand  
11                   Dollars (\$5,000.00) per violation.

12                  B.   1.   No person shall knowingly publish for circulation within  
13                  the borders of the State of Oklahoma an advertisement of any kind in  
14                  any print, broadcast or electronic medium, including, but not  
15                  limited to, newspapers, magazines, telephone directories, handbills,  
16                  radio or television, which violates subparagraph e g or h of  
17                  paragraph 1 of subsection A of this section.

18                  2.   Any person violating the provisions of this subsection  
19                  shall, upon conviction thereof, be guilty of a misdemeanor and shall  
20                  be punished by a fine not to exceed Five Thousand Dollars  
21                  (\$5,000.00) per violation.

22                  C.   The payment or acceptance of costs and expenses listed in  
23                  Section 7505-3.2 of Title 10 of the Oklahoma Statutes shall not be a

1 violation of this section as long as the petitioner or birth parent  
2 has complied with the applicable procedure specified in Section  
3 7505-3.2 of Title 10 of the Oklahoma Statutes and such costs and  
4 expenses are approved by the court.

5 D. Any person knowingly failing to file an affidavit of all  
6 adoption costs and expenses before the final decree of adoption as  
7 required by Sections 7505-3.2 and 7505-6.2 of Title 10 of the  
8 Oklahoma Statutes shall be guilty of a misdemeanor.

9 SECTION 4. This act shall become effective July 1, 2006.

10 SECTION 5. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-28-06 - DO  
15 PASS, As Amended.