

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2538

By: Peterson (Pam)

AS INTRODUCED

An Act relating to adoption; amending 10 O.S. 2001, Sections 7503-2.3 and 7505-2.1, which relate to adoption of minors; modifying those persons or entities that can accept a permanent relinquishment; clarifying the term agency; adding certain person for applicability of act; amending 21 O.S. 2001, Sections 865 and 866, which relate to trafficking in children; adding certain definitions; modifying certain definition; modifying the persons or entities that certain law applies; adding certain conduct considered to be the crime of trafficking in children; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7503-2.3, is amended to read as follows:

Section 7503-2.3 A. A permanent relinquishment may be executed by a person whose consent to the adoption of a minor is required by Section 7503-2.1 of this title. The permanent relinquishment shall be in writing and shall relinquish all of that individual's rights with respect to the minor, including legal and physical custody and the right to consent to the minor's adoption.

B. Permanent relinquishments may be made only to:

1. The Department of Human Services;
2. A child-placing agency; ~~or~~
3. ~~Any other person, with the written consent of the Department~~
~~or court~~ A guardian ad litem; or
4. A legal guardian, other than the prospective adoptive parent of the child.

C. A permanent relinquishment shall be in writing, executed before a judge of the district court in this state, recorded by a court reporter and contain:

1. The date, place, and time of the execution of the permanent relinquishment;

2. The name and date of birth of the person executing the permanent relinquishment;

3. The current mailing address, telephone number and social security number of the person executing the permanent relinquishment;

4. Instructions that the permanent relinquishment is irrevocable, except upon the specific grounds specified in Section 7503-2.7 of this title, upon which the permanent relinquishment can be revoked and the manner in which a motion to set aside the permanent relinquishment must be filed; and

5. The name of the person or agency as described in subsection B of this section to whom the permanent relinquishment is being given and who shall have the right to give consent to the minor's adoption.

D. A permanent relinquishment must state:

1. That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;

2. An understanding that after the permanent relinquishment is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized by the Oklahoma Adoption Code;

3. That the person executing the permanent relinquishment is represented by counsel or has waived any right to counsel;

4. That the execution of the permanent relinquishment does not terminate any duty of the person executing the permanent relinquishment to support the mother or the minor until the adoption is completed;

5. That the person executing the permanent relinquishment has not received or been promised any money or anything of value for the permanent relinquishment, except for payments authorized by law;

6. Whether the individual executing the permanent relinquishment is a member of an Indian tribe and whether the minor is eligible for membership or the minor is a member of an Indian tribe;

7. That the person believes the adoption of the minor is in the minor's best interest; and

8. That the person executing the permanent relinquishment has been advised that an adult adopted person born in Oklahoma, whose decree of adoption is finalized after November 1, 1997, may obtain a copy of such person's original certificate of birth unless affidavits of nondisclosure have been filed pursuant to Section 7503-2.5 of this title and that the relinquishing parent may sign an affidavit of nondisclosure.

E. When it appears to the court that the parent or guardian executing a permanent relinquishment desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In all counties having county indigent defenders, the county indigent defenders shall assume the duties of representation in such proceedings.

F. The transcript of the court proceedings pursuant to this section shall be placed in the court record.

G. The verification of the court shall be in substantially the following form:

I, _____, Judge of the District Court in and for _____ County, State of Oklahoma, a Court having original adoption jurisdiction, do hereby certify, that upon this day, _____ personally appeared in open Court, before me, and orally and in writing executed the above and foregoing permanent relinquishment for adoption.

In executing this acknowledgement, I further certify that the said _____ acknowledged that the person executed said relinquishment to adoption freely and voluntarily, and that it was explained to such person by or before me, the undersigned Judge of the District Court, that in executing the relinquishment, the person was surrendering all parental authority whatsoever over the minor; and that with such explanation made to the person relinquishing the minor by or before me, the undersigned Judge of the District Court, the person executed the relinquishment, freely, voluntarily and intelligently for all uses and purposes therein set forth.

I further certify that it was explained to the relinquishing person that this relinquishment is irrevocable and final except for fraud or duress and may not be revoked or set aside except and unless no Petition to Adopt is filed within nine (9) months after placement of the minor or if this or some other court decides not to terminate the rights of the other parent of the minor. I further certify that I am satisfied that the relinquishing person understands the consequences of an adoption; the relinquishing person has represented that such person has not received or been promised any money or anything of value for the giving of the permanent relinquishment except for those payments authorized by law; the relinquishing person has represented that such person is not under the influence of alcohol or medication or any other substance that affects the person's competence; the person fully understood the English language and communicated in the English language at all times during said hearing, or all information was translated into the relinquishing person's language, and was fully understood by the person; and if the relinquishing person was the biological parent, such parent was advised regarding the affidavit of nondisclosure.

H. A permanent relinquishment shall be signed before any judge of a court having probate or adoption jurisdiction in this state or

in the state of residence of the person executing the permanent relinquishment.

I. 1. a. If an individual permanently relinquishing the child resides in a country or place other than the United States of America, other than a member of the United States Armed Services stationed abroad, the permanent relinquishment of the individual may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of the government of the place of such person's residence who is authorized to administer oaths under the laws of such country or place.

b. If the foreign country's government does not involve itself in adoption matters, the permanent relinquishment may be executed before an officer of the Judge Advocate General's Office of the United States Armed Services or before an officer of the United States Embassy located in that country, provided the execution of a permanent relinquishment is not a violation of the laws of the foreign country, or a violation of international law or treaty between the foreign country's government and the United States. The permanent relinquishment shall reflect that the permanent relinquishment is not given or accepted in violation of the laws of the foreign country or in violation of international law or treaty between such foreign country's government and the United States.

2. If an individual permanently relinquishing the child is a member of the United States Armed Services stationed in a country or place other than the United States, the individual's permanent relinquishment may be acknowledged before an officer of the Judge

Advocate General's Office or other legal officer possessing the authority to administer oaths.

J. If the written instrument containing a permanent relinquishment is written in a language other than the English language, the petitioner must have it translated into the English language by a person qualified to do so, and must file the original instrument together with the translation with the court. The translation must be sworn to as being a true and correct translation by the person translating the document.

K. Except as otherwise required by subsection I of this section, when the person permanently relinquishing the child for the purposes of adoption resides outside of Oklahoma, the permanent relinquishment by such person may be executed in that state or country in the manner set forth in the Oklahoma Adoption Code or in the manner prescribed by the laws of the state or country of such person's residence.

L. 1. A court before which a permanent relinquishment has been executed may enter an order terminating parental rights of the parent of a child if such parent has executed a permanent relinquishment for adoption pursuant to the Oklahoma Adoption Code.

2. Any order terminating parental rights of a parent pursuant to this subsection shall state that the termination of parental rights shall not terminate the duty of the parent to support the child of such parent. The duty of the parent to support the child shall not be terminated until such time as a final decree of adoption has been entered.

3. Any proceedings held pursuant to this subsection shall not require the state as a necessary party.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-2.1, is amended to read as follows:

Section 7505-2.1 A. 1. Prior to the filing of a petition for adoption, ~~an~~ a child-placing agency, attorney, or prospective

adoptive parent to whom a mother has executed a consent to adoption or has permanently relinquished a minor born out of wedlock may file a petition for the termination of the parental rights of a putative father or a parent of the child. The petition shall be filed with the district court of the county in which the relinquishment was executed or in the county in which the putative father, a parent, the petitioner, or the minor resides at the time of the filing of the petition.

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

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

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

3. If the identity or whereabouts of a putative father or parent is unknown, the court must determine whether the putative father or parent can be identified or located. Following an inquiry

pursuant to Section 7505-4.3 of this title, if the court finds that the identity or whereabouts of the putative father or parent cannot be ascertained, and this fact is attested to by affidavit of the permanently relinquishing mother or the legal custodian or guardian of the child, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last-known address of the putative father or parent. The notice shall be published once pursuant to the laws relating to service of notice by publication, in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least fifteen (15) days after publication of the notice. When notice is given by publication, the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

4. A putative father or parent may waive ~~his~~ their right to notice pursuant to this section. The waiver ~~signed by the putative father~~ shall include a statement affirming that the ~~putative father~~ person signing the waiver understands that the waiver shall constitute grounds for the termination of the parental rights of such ~~putative father~~ person pursuant to the provisions of this section and Section 7505-4.2 of this title. A putative father or legal husband may also waive his right to notice pursuant to this section, by signing an extrajudicial consent pursuant to Section 7503-2.6 of this title, or by waiving notice on a form filed with the Paternity Registry of the Department of Human Services, or by failing to register with the Paternity Registry of the Department of Human Services after receiving a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title.

C. When a putative father or parent appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In all counties having

county indigent defenders, the county indigent defenders shall assume the duties of the representation in such proceedings.

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

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

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

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

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

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

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

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

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

G. No order of the court shall be vacated, set aside, or annulled upon the application of any person who was properly served with notice in accordance with this section but failed to appear unless the applicant can establish by clear and convincing evidence that such failure to appear was due to unavoidable circumstances. Such application must be filed within ten (10) days of the date of the hearing at which the applicant failed to appear. No order of the court shall be vacated, set aside, or annulled upon the application of any person who waived notice pursuant to paragraph 4 of subsection B of this section.

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

I. An appeal may be taken from any final order, judgment, or decree rendered pursuant to this section to the Supreme Court by any

person aggrieved thereby, in the manner provided for appeals from the court as provided in this subsection.

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

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

3. The briefing schedule is established as follows:

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

J. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency

to whose care such minor has been committed, unless the Supreme Court shall so order.

K. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of the appeals and in any other proceedings concerning the relinquishment of the child or the termination of parental rights pursuant to this section shall be expedited by the Supreme Court.

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

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

SECTION 3. AMENDATORY 21 O.S. 2001, Section 865, is amended to read as follows:

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

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

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

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

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

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

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

SECTION 4. AMENDATORY 21 O.S. 2001, Section 866, is amended to read as follows:

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

- a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes,
- b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Department of Human Services, a child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing Act, or

an attorney authorized to practice law in Oklahoma. The provisions of this paragraph shall not prohibit an attorney licensed to practice law in another state or an out-of-state licensed child-placing agency from receiving compensation when working with an attorney licensed in this state who is, or when working with a child-placing agency licensed in this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement,

- c. bringing or causing to be brought into this state or sending or causing to be sent outside this state any child for the purpose of placing such child in a foster home or for the adoption thereof without first complying with the Interstate Compact on the Placement of Children. Provided, however, that this provision shall have no application to the birth parent or adoptive parent or guardian of the child nor to a person bringing said child into this state for the purpose of adopting the the child into such person's own family but shall apply to any facilitator, any out-of-state or in-state child-placing agency, any attorney, or any person other than the birth parent or adoptive parent who arranges or assists in such an adoptive placement and who knowingly fails or refuses to comply with the Interstate Compact on the Placement of Children,
- d. ~~the receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the receipt had no intent to consent to eventual adoption or by a woman who is not~~

~~pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption~~ the solicitation or receipt of any money or any other thing of value or expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption,

e. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption,

f. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who solicits from more than one person or child-placing agency without fully disclosing in advance to the subsequent person or child-placing agency the previous solicitation or receipt of expenses,

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

~~f.~~ h. (1) advertisements for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by a child-

placing agency licensed in this state or an attorney authorized to practice law in Oklahoma. Nothing in this section shall prohibit a person from advertising to solicit a pregnant woman to consider adoptive placement with the person or to locate a child for an adoptive placement into the person's own home, provided that such person has received a favorable preplacement home study recommendation in accordance with Section 7505-5.1 of ~~this title~~ Title 10 of the Oklahoma Statutes, which shall be verified by the signed written statement of the person or agency which performed the home study.

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

2. a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a Schedule G felony and shall be punishable by imprisonment of up to ten (10) years or a fine of up to Ten Thousand Dollars (\$10,000.00) per violation or both such fine and imprisonment.

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

B. 1. No person shall knowingly publish for circulation within the borders of the State of Oklahoma an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills,

radio or television, which violates subparagraph e or f of paragraph 1 of subsection A of this section.

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

C. The payment or acceptance of costs and expenses listed in Section 7505-3.2 of Title 10 of the Oklahoma Statutes shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified in Section 7505-3.2 of Title 10 of the Oklahoma Statutes and such costs and expenses are approved by the court.

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

SECTION 5. This act shall become effective July 1, 2006.

SECTION 6. 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.

50-2-8180

MD

01/17/06