

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1576

By: Peters

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to guardian and ward; amending 10
9 O.S. 2001, Section 7505-4.2, which relates to
10 exceptions to requirement of parental consent for
11 adoption; specifying support considerations; amending
12 30 O.S. 2001, Section 4-105, which relates to
13 suitability of person proposed to serve as guardian;
14 modifying factors the court is to consider in
15 determining suitability of a person to serve as
16 guardian; providing for background checks; providing
17 for disclosure of certain information; and providing
18 an effective date.

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

20 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7505-4.2, is
21 amended to read as follows:

22 Section 7505-4.2 A. Consent to adoption is not required from a
23 putative father of a minor who, at the hearing provided for in
24 Section 7505-2.1 or 7505-4.1 of this title, fails to prove he is the
25 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

1 (14) months immediately preceding the filing of a petition for
2 adoption of a child or a petition to terminate parental rights
3 pursuant to Section 7505-2.1 of this title, has willfully failed,
4 refused, or neglected to contribute to the support of such minor:

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

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

11 For the purposes of this section, any support for the minor
12 child shall benefit the minor child in the form of providing a
13 necessity for the minor child. Payments that shall not be
14 considered support shall include, but not be limited to: genetic and
15 drug testing, supervised visitation, counseling for anyone other
16 than the child, court fees and costs, restitution payments and
17 transportation for anyone other than the child, unless
18 transportation expenses are specifically ordered in lieu of support
19 in a court order.

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

22 C. Consent to adoption is not required from a father or
23 putative father of a minor born out of wedlock if:
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1 1. The minor is placed for adoption within ninety (90) days of
2 birth, and the father or putative father fails to show he has
3 exercised parental rights or duties towards the minor, including,
4 but not limited to, failure to contribute to the support of the
5 mother of the child to the extent of his financial ability during
6 her term of pregnancy; or

7 2. The minor is placed for adoption within fourteen (14) months
8 of birth, and the father or putative father fails to show that he
9 has exercised parental rights or duties towards the minor,
10 including, but not limited to, failure to contribute to the support
11 of the minor to the extent of his financial ability, which may
12 include consideration of his failure to contribute to the support of
13 the mother of the child to the extent of his financial ability
14 during her term of pregnancy. Failure to contribute to the support
15 of the mother during her term of pregnancy shall not in and of
16 itself be grounds for finding the minor eligible for adoption
17 without such father's consent.

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

20 D. In any case where a father or putative father of a minor
21 born out of wedlock claims that, prior to the receipt of notice of
22 the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this
23 title, he had been specifically denied knowledge of the minor or
24 denied the opportunity to exercise parental rights and duties toward

1 the minor, such father or putative father must prove to the
2 satisfaction of the court that he made sufficient attempts to
3 discover if he had fathered a minor or made sufficient attempts to
4 exercise parental rights and duties toward the minor prior to the
5 receipt of notice.

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

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

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

16 H. 1. Consent to adoption is not required from a parent who
17 fails to establish and/or maintain a substantial and positive
18 relationship with a minor for a period of twelve (12) consecutive
19 months out of the last fourteen (14) months immediately preceding
20 the filing of a petition for adoption of the child.

21 2. In any case where a parent of a minor claims that prior to
22 the receipt of notice of the hearing provided for in Sections 7505-
23 2.1 and 7505-4.1 of this title, such parent had been denied the
24 opportunity to establish and/or maintain a substantial and positive

1 relationship with the minor by the custodian of the minor, such
2 parent shall prove to the satisfaction of the court that he or she
3 has taken sufficient legal action to establish and/or maintain a
4 substantial and positive relationship with the minor prior to the
5 receipt of such notice.

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

8 a. has not maintained frequent and regular contact with
9 the minor through frequent and regular visitation or
10 frequent and regular communication to or with the
11 minor, or

12 b. has not exercised parental rights and
13 responsibilities.

14 I. Consent to adoption is not required from a parent who has
15 been convicted in a criminal action pursuant to the provisions of
16 Sections 7102 and 7115 of this title and Sections 1021.3, 1111 and
17 1123 of Title 21 of the Oklahoma Statutes or who has either:

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

23 2. Physically or sexually abused the minor or a sibling of such
24 minor or failed to protect the minor or a sibling of such minor from

1 physical or sexual abuse subsequent to a previous finding that such
2 parent has physically or sexually abused the minor or a sibling of
3 such minor or failed to protect the minor or a sibling of such minor
4 from physical or sexual abuse.

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

9 K. Consent to adoption is not required from a parent if the
10 parent has been sentenced to a period of incarceration of not less
11 than ten (10) years and the continuation of parental rights would
12 result in harm to the minor based on consideration of the following
13 factors, among others: the duration of incarceration and its
14 detrimental effect on the parent/child relationship; any previous
15 incarcerations; any history of criminal behavior, including crimes
16 against children; the age of the minor; the evidence of abuse or
17 neglect of the minor or siblings of the minor by the parent; and the
18 current relationship between the parent and the minor and the manner
19 in which the parent has exercised parental rights and duties in the
20 past.

21 L. Consent to adoption is not required from:

22 1. A parent who has a mental illness or mental deficiency, as
23 defined by paragraphs f and g of Article II of Section 6-201 of
24 Title 43A of the Oklahoma Statutes, which renders the parent

1 incapable of adequately and appropriately exercising parental
2 rights, duties and responsibilities;

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

5 3. The mental illness or mental deficiency of the parent is
6 such that it will not respond to treatment, therapy or medication
7 and, based upon competent medical opinion, the condition will not
8 substantially improve.

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

20 N. Consent to adoption is not required from:

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

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

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

4 O. Consent to adoption is not required from a parent who has
5 voluntarily placed a minor child in the care of a licensed child
6 care institution or child-placing agency, if the minor has remained
7 in out-of-home care for eighteen (18) months or more, and the parent
8 has willfully failed to substantially comply for twelve (12)
9 consecutive months out of the fourteen-month period immediately
10 preceding the filing of the petition for adoption with a reasonable
11 written plan of care. Provided, the willful failure to comply with
12 the written plan of care may not be a ground for adoption without
13 consent unless the plan of care, at the time it was initially
14 executed by the parent, contained notice that failure to
15 substantially comply constitutes grounds for adoption without
16 consent. The reasonableness of the plan shall be a question of fact
17 to be determined by the court.

18 SECTION 2. AMENDATORY 30 O.S. 2001, Section 4-105, is
19 amended to read as follows:

20 Section 4-105. A. In conducting an inquiry to determine
21 whether a person is suitable to serve as a guardian, the court shall
22 determine if:

23 1. The person proposed to serve as guardian is a minor or an
24 incapacitated or partially incapacitated person;

1 2. The person proposed to serve as guardian ~~is a convicted~~
2 ~~felon~~ and each adult household member of the proposed guardian has a
3 record of a criminal conviction, adjudication, protective order, or
4 pending criminal charge. The petitioner shall present to the court
5 an Oklahoma State Bureau of Investigation (OSBI) criminal background
6 check and a Child Abuse/Neglect Information System Search result
7 evidencing no record of abuse or neglect for the proposed guardian
8 or any adult household member. The petitioner shall disclose the
9 case name, status, and final adjudication of any civil matter in
10 state or federal court including, but not limited to, bankruptcy
11 adjudications, involving the proposed guardian or any adult
12 household member of the proposed guardian;

13 3. The person proposed to serve as guardian is insolvent or has
14 declared bankruptcy during five (5) years prior to the filing of the
15 pleading proposing such person to serve as guardian;

16 4. The person proposed to serve as guardian ~~or~~ is under any
17 financial obligation to the ward; or

18 5. There exists a conflict of interest which would preclude or
19 be substantially detrimental to the ability of the person to act in
20 the best interest of the subject of the proceeding if such person is
21 appointed.

22 B. No minor or incapacitated person shall be appointed guardian
23 of an incapacitated or partially incapacitated person.

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1 C. If the person proposed to serve ~~is a convicted felon~~ has a
2 criminal conviction, adjudication, protective order, or pending
3 criminal charge, the court shall make further inquiry into the
4 nature of the ~~felony~~ criminal conviction, adjudication, protective
5 order, or pending criminal charge and the surrounding circumstances
6 ~~surrounding the conviction~~. The court shall appoint such person
7 proposed to serve only upon determining that the facts underlying
8 the ~~conviction~~ circumstances do not give rise to a reasonable belief
9 that ~~that~~ the person proposed to serve will be unfaithful to or
10 neglectful of ~~his~~ the fiduciary and care responsibilities of the
11 guardian, and that the appointment is in the best interest of the
12 ward.

13 D. If the person proposed to serve as guardian or limited
14 guardian of the property of an incapacitated or partially
15 incapacitated person is insolvent or has declared bankruptcy within
16 five (5) years prior to the filing of the pleading proposing that
17 such person serve, the court shall appoint such person only after
18 giving due consideration to the nature and extent of the property of
19 the ward and the anticipated actions necessary to manage the estate
20 of the ward, and only upon a determination that such appointment is
21 in the best interest of the ward. Insolvency or bankruptcy shall
22 have no effect on the qualification of a person proposed to serve as
23 guardian or limited guardian of the person of an incapacitated or
24 partially incapacitated person.

1 E. If the person proposed to serve as guardian or limited
2 guardian of the property of an incapacitated or partially
3 incapacitated person is under any financial obligation to the ward,
4 the court shall make further inquiry into the nature and extent of
5 such obligation. The court shall appoint the person proposed to
6 serve only after a determination that such obligation will not
7 impair the ability of the person proposed to serve to discharge his
8 fiduciary responsibilities, and that the appointment is in the best
9 interest of the ward. Being under financial obligation to the ward
10 shall have no effect on the qualification of a person proposed to
11 serve as guardian or limited guardian of the person of an
12 incapacitated or partially incapacitated person.

13 F. A current or potential conflict of interest which is not
14 substantial and not likely to preclude or impair the ability of a
15 person proposed to serve as a guardian acting in the best interest
16 of his ward shall not, by itself, disqualify such person from
17 appointment.

18 SECTION 3. This act shall become effective November 1, 2007.

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