

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 3002

6 By: Johnson (Dennis)

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to children; amending 10 O.S. 2001,  
9 Sections 7503-2.1, 7503-2.2, 7503-2.4 and 7510-1.3,  
10 as amended by Section 12, Chapter 445, O.S.L. 2002  
11 (10 O.S. Supp. 2007, Section 7510-1.3), which relate  
12 to adoption; increasing age of consent by minor;  
13 providing certain limitation for children in  
14 substitute care; and providing an effective date.

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

16 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7503-2.1, is  
17 amended to read as follows:

18 Section 7503-2.1 A. A minor may be adopted when there has been  
19 filed written consent to adoption or a permanent relinquishment for  
20 adoption executed by:

- 21 1. Both parents of the minor;
- 22 2. One parent of the minor, alone, if:
  - 23 a. the other parent is dead,
  - 24 b. the parental rights of the other parent have been  
terminated, or

1           c.    the consent of the other parent is otherwise not  
2                    required pursuant to Section 7505-4.2 of this title;

3           3.    The legal guardian of the person of the minor or the  
4 guardian ad litem of the minor if both parents are dead or if the  
5 rights of the parents have been terminated by judicial proceedings,  
6 or the consent of both parents is otherwise not required pursuant to  
7 Section 7505-4.2 of this title, and such guardian or guardian ad  
8 litem has authority by order of the court appointing the guardian to  
9 consent to the adoption;

10          4.    The executive head of a licensed child-placing agency if:

11           a.    the minor has been permanently relinquished to such  
12                   agency by:

13                   (1) both parents, or

14                   (2) one parent alone if the other parent is dead, the  
15                         parental rights of the other parent have been  
16                         terminated, or the consent of the other parent is  
17                         otherwise not required pursuant to Section 7505-  
18                         4.2 of this title, or

19           b.    the rights of both parents have been judicially  
20                   terminated and custody of the minor has been legally  
21                   vested in such agency with authority to consent to  
22                   adoption of the minor; or

23          5.    Any person having legal custody of a minor by court order  
24 if:

- 1 a. the parental rights of both parents have been  
2 judicially terminated, and  
3 b. the court that issued the custody order for the minor  
4 has consented to adoption and a certified copy of its  
5 order containing its consent is filed before the final  
6 decree.

7 B. 1. A parent of a minor born in wedlock or a parent who is  
8 sixteen (16) years of age or older shall be deemed capable of giving  
9 consent to the adoption of a minor.

10 2. If the parent of a minor born out of wedlock is under  
11 sixteen (16) years of age, that parent's consent to the adoption  
12 shall be deemed sufficient when:

- 13 a. given by such minor parent before a judge of the  
14 district court, and  
15 b. accompanied by the written consent of:  
16 (1) the legal guardian of the minor parent,  
17 (2) the parents of the minor parent,  
18 (3) the parent having custody of the minor parent, if  
19 the other parent of the minor parent is deceased  
20 or the parents of the minor parent are divorced,  
21 or  
22 (4) the person having physical custody of the minor  
23 parent, if both parents of the minor parent are  
24 deceased, or

1 c. accompanied by a finding of the court issuing the  
2 decree of adoption, if consent cannot be secured from  
3 any individual whose consent is required by  
4 subparagraph b of this paragraph, that:

5 (1) either notice was given by mail by the court to  
6 such person directing the person to show cause at  
7 a time appointed by the court, which shall be not  
8 less than ten (10) days from the date of mailing,  
9 why the adoption should not be granted without  
10 the individual's consent, or that notice was  
11 waived by the personal appearance of the  
12 individual, and

13 (2) the individual did not appear to contest the  
14 adoption, or the consent of the individual is  
15 unreasonably withheld.

16 C. If a minor to be adopted is ~~twelve (12)~~ fourteen (14) years  
17 of age or older, the consent of the minor to the adoption is  
18 required in addition to the consents required by subsections A and B  
19 of this section before a decree of adoption may be granted, unless  
20 the court makes a finding that it is not in the best interest of the  
21 minor to require the minor's consent. The consent of the minor must  
22 be given before the court in such form as the court shall direct.

23 D. 1. When consent for adoption is necessary for minors in the  
24 custody of the Department of Human Services, the Director of the

1 Department of Human Services or the designee of the Director may  
2 designate, authorize, and direct in writing an employee of the  
3 Department to appear in the court of the county in which said  
4 adoption proceedings are to be completed and to give written consent  
5 for the adoption of such minor by the family whose application for  
6 adoption has been approved by the Department of Human Services; or

7 2. The executive head of a licensed child-placing agency whose  
8 consent is required for the adoption of a minor who is in the  
9 custody of the licensed child-placing agency may designate,  
10 authorize and direct in writing an employee of the agency to appear  
11 in the district court of the county in which the adoption  
12 proceedings are to be completed or before anyone authorized by law  
13 to take acknowledgements and to give written consent for the  
14 adoption of the minor.

15 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7503-2.2, is  
16 amended to read as follows:

17 Section 7503-2.2 A. The mother of a minor shall not execute a  
18 valid consent to the adoption of the minor or a permanent  
19 relinquishment of the minor prior to the birth of the minor.

20 B. The father of a minor born in wedlock shall not execute a  
21 valid consent to the adoption of the minor or a permanent  
22 relinquishment of the minor prior to the birth of the minor.

23 C. A putative father of a minor may execute a consent to the  
24 adoption of the minor, a permanent relinquishment of the minor, or

1 an extrajudicial consent to the adoption of the minor before or  
2 after the birth of the minor.

3 D. A guardian, guardian ad litem or legal custodian of a child  
4 may execute a consent to the adoption of a minor or a permanent  
5 relinquishment at any time after being authorized by a court to do  
6 so.

7 E. A child-placing agency that places a child for adoption may  
8 execute its consent at any time at or before the hearing on the  
9 petition for adoption.

10 F. A minor ~~twelve (12)~~ fourteen (14) years of age or older  
11 whose consent is required pursuant to Section 7503-2.1 of this title  
12 may execute a consent to adoption at any time at or before the  
13 hearing on the petition for adoption.

14 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7503-2.4, is  
15 amended to read as follows:

16 Section 7503-2.4 A. A consent to an adoption of a minor shall  
17 be in writing, recorded by a court reporter, and executed before a  
18 judge of the district court in this state and contain:

19 1. The date, place, and time of the execution of the consent;

20 2. The name and date of birth of the person executing the  
21 consent;

22 3. The current mailing address, telephone number, and social  
23 security number of the person executing the consent; and  
24

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

5 B. A consent must state:

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

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

12 3. That the person executing the consent is represented by  
13 counsel or has waived any right to counsel;

14 4. That the execution of the consent does not terminate any  
15 duty of the person executing the consent to support the mother or  
16 the minor until the adoption is completed;

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

20 6. Whether the individual executing the consent is a member of  
21 an Indian tribe and whether the minor is eligible for membership or  
22 the child is a member of an Indian tribe;

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

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

8 C. Before executing a consent, a minor ~~twelve (12)~~ fourteen  
9 (14) years of age or older must have been informed by the court of  
10 the meaning and consequences of the adoption and the availability of  
11 social and medical history information, pursuant to Section 7504-1.2  
12 of this title, when the minor turns eighteen (18) years of age.

13 D. When it appears to the court that the parent or guardian  
14 executing a consent desires counsel but is indigent and cannot for  
15 that reason employ counsel, the court shall appoint counsel. In all  
16 counties having county indigent defenders, the county indigent  
17 defenders shall assume the duties of representation in such  
18 proceedings.

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

21 F. Except as otherwise provided by subsection K of this  
22 section, verification of the court shall be in substantially the  
23 following form:  
24

1 I, \_\_\_\_\_, Judge of the District Court in and for  
2 \_\_\_\_\_ County, State of Oklahoma, a Court having original  
3 adoption jurisdiction, do hereby certify, that upon this day,  
4 \_\_\_\_\_ personally appeared in open Court, before me, and orally  
5 and in writing executed the above and foregoing Appearance and  
6 Consent to Adoption.

7 In executing this acknowledgement, I further certify that the  
8 said \_\_\_\_\_ acknowledged that the person executed said consent  
9 to adoption freely and voluntarily, and that it was explained to  
10 such person by or before me, the undersigned Judge of the District  
11 Court, that in executing the consent the person was surrendering all  
12 parental authority whatsoever over the minor; and that with such  
13 explanation made to the consenting person by or before me, the  
14 undersigned Judge of the District Court, the person executed the  
15 consent, freely, voluntarily and intelligently for all uses and  
16 purposes therein set forth.

17 I further certify that it was explained to the consenting person  
18 that this consent is irrevocable and final except for fraud or  
19 duress and may not be revoked or set aside except and unless no  
20 Petition to Adopt is filed within nine (9) months after placement of  
21 the minor or if this or some other court decides not to terminate  
22 the rights of the other parent of the minor. I further certify that  
23 I am satisfied that the consenting person understands the  
24 consequences of an adoption; the consenting person has represented

1 that such person has not received or been promised any money or  
2 anything of value for the giving of consent except for those  
3 payments authorized by law; the consenting person has represented  
4 that such person is not under the influence of alcohol or medication  
5 or other substance that affects the person's competence; the parent  
6 fully understood the English language and communicated in the  
7 English language at all times during said hearing, or all  
8 information was translated into the consenting person's language,  
9 and was fully understood by the person; and if the consenting person  
10 was the biological parent, such parent was advised regarding the  
11 affidavit of nondisclosure.

12 G. A consent may be signed before any judge of a court having  
13 probate or adoption jurisdiction in this state or in the state of  
14 residence of the person executing the consent.

15 H. 1. a. If an individual whose consent is necessary resides in  
16 a country or place other than the United States of  
17 America, other than a member of the United States  
18 Armed Services stationed abroad, the consent of the  
19 individual to the adoption may be obtained by a  
20 written instrument signed by such person and  
21 acknowledged before an officer of the legal  
22 subdivision of the government of the place of such  
23 person's residence who is authorized to administer  
24 oaths under the laws of such country or place.

1           b.    If the foreign country's government does not involve  
2                    itself in adoption matters, the consent may be  
3                    executed before an officer of the Judge Advocate  
4                    General's Office of the United States Armed Services  
5                    or before an officer of the United States Embassy  
6                    located in that country, provided the execution of  
7                    such consent is not a violation of the laws of the  
8                    foreign country, or a violation of international law  
9                    or treaty between the foreign country's government and  
10                  the United States.  The consent shall reflect that the  
11                  consent is not given or accepted in violation of the  
12                  laws of the foreign country or in violation of  
13                  international law or treaty between such foreign  
14                  country's government and the United States.

15           2.    If an individual whose consent is necessary is a member of  
16                  the United States Armed Services stationed in a country or place  
17                  other than the United States, the individual's consent may be  
18                  acknowledged before an officer of the Judge Advocate General's  
19                  Office or other legal officer possessing the authority to administer  
20                  oaths.

21           I.    If the written instrument containing a consent to adoption  
22                  is written in a language other than the English language, the  
23                  petitioner must have it translated into the English language by a  
24                  qualified translator, and must file the original instrument together

1 with the translation with the court. The translation must be sworn  
2 to as being a true and correct translation by the person translating  
3 the document.

4 J. Except as otherwise required by subsection H of this  
5 section, when the person whose consent is or may be required resides  
6 outside of Oklahoma, the consent to adoption by such person may be  
7 executed in that state or country in the manner set forth in the  
8 Oklahoma Adoption Code or in the manner prescribed by the laws of  
9 the state or country of such person's residence.

10 K. 1. When the person whose consent is required is the  
11 Director or designee of the Department of Human Services for minors  
12 in the custody of the Department of Human Services, the contents of  
13 the consent need only contain the full name of the person executing  
14 the consent, that the person executing the consent is duly  
15 authorized by the Director to consent to the adoption, the full name  
16 of the child being adopted, and the names and addresses of adoptive  
17 petitioners.

18 2. The verification of the court shall be in substantially the  
19 following form:

20 I, \_\_\_\_\_, Judge of the District Court in and for  
21 \_\_\_\_\_ County, State of Oklahoma, a Court having original  
22 adoption jurisdiction, do hereby certify, that upon this day,  
23 \_\_\_\_\_ personally appeared in open Court, before me, and orally  
24

1 and in writing executed the above and foregoing Appearance and  
2 Consent to Adoption.

3 SECTION 4. AMENDATORY 10 O.S. 2001, Section 7510-1.3, as  
4 amended by Section 12, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2007,  
5 Section 7510-1.3), is amended to read as follows:

6 Section 7510-1.3 A. The Department of Human Services shall  
7 establish and administer an ongoing program of adoption assistance  
8 for eligible special needs children in the legal custody of the  
9 Department or a federally recognized Indian tribe, as defined by the  
10 federal Indian Child Welfare Act and the Oklahoma Indian Child  
11 Welfare Act, who are not eligible for federally funded adoption  
12 assistance benefits. Adoption assistance benefits under this  
13 program shall be provided out of funds appropriated to the  
14 Department for the maintenance of children in foster care or made  
15 available to it from other sources.

16 B. Adoption assistance benefits under this program may include  
17 Medicaid coverage, a monthly adoption assistance payment,  
18 reimbursement of nonrecurring adoption expenses, special services,  
19 or any combination of such benefits.

20 C. To comply with 42 U.S.C., Section 471(a)(14) of the Social  
21 Security Act and 45 C.F.R., Section 1356.21(n), the Department shall  
22 limit the number of children under the responsibility of the  
23 Department, who remain in substitute care for a period over twenty-  
24

1 four (24) months, to no more than thirty percent (30%) of the  
2 children in care during any fiscal year.

3 SECTION 5. This act shall become effective November 1, 2008.

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