

THE HOUSE OF REPRESENTATIVES  
Thursday, March 8, 2007

Committee Substitute for  
House Bill No. 1576

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1576 - By: PETERS of the House and WILLIAMSON of the Senate.

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

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

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

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

6 B. Consent to adoption is not required from a parent who, for a period of twelve (12)  
7 consecutive months out of the last fourteen (14) months immediately preceding the filing  
8 of a petition for adoption of a child or a petition to terminate parental rights pursuant to  
9 Section 7505-2.1 of this title, has willfully failed, refused, or neglected to contribute to  
10 the support of such minor:

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

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

5           For the purposes of this section, any support for the minor child shall benefit the  
6 minor child in the form of providing a necessity for the minor child. Payments that shall  
7 not be considered support shall include, but not be limited to: genetic and drug testing,  
8 supervised visitation, counseling for anyone other than the child, court fees and costs,  
9 restitution payments and transportation for anyone other than the child, unless  
10 transportation expenses are specifically ordered in lieu of support in a court order.

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

13           C. Consent to adoption is not required from a father or putative father of a minor  
14 born out of wedlock if:

15           1. The minor is placed for adoption within ninety (90) days of birth, and the father  
16 or putative father fails to show he has exercised parental rights or duties towards the  
17 minor, including, but not limited to, failure to contribute to the support of the mother of  
18 the child to the extent of his financial ability during her term of pregnancy; or

19           2. The minor is placed for adoption within fourteen (14) months of birth, and the  
20 father or putative father fails to show that he has exercised parental rights or duties  
21 towards the minor, including, but not limited to, failure to contribute to the support of  
22 the minor to the extent of his financial ability, which may include consideration of his

1 failure to contribute to the support of the mother of the child to the extent of his financial  
2 ability during her term of pregnancy. Failure to contribute to the support of the mother  
3 during her term of pregnancy shall not in and of itself be grounds for finding the minor  
4 eligible for adoption without such father's consent.

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

7 D. In any case where a father or putative father of a minor born out of wedlock  
8 claims that, prior to the receipt of notice of the hearing provided for in Sections 7505-2.1  
9 and 7505-4.1 of this title, he had been specifically denied knowledge of the minor or  
10 denied the opportunity to exercise parental rights and duties toward the minor, such  
11 father or putative father must prove to the satisfaction of the court that he made  
12 sufficient attempts to discover if he had fathered a minor or made sufficient attempts to  
13 exercise parental rights and duties toward the minor prior to the receipt of notice.

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

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

5 2. In any case where a parent of a minor claims that prior to the receipt of notice of  
6 the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, such parent had  
7 been denied the opportunity to establish and/or maintain a substantial and positive  
8 relationship with the minor by the custodian of the minor, such parent shall prove to the  
9 satisfaction of the court that he or she has taken sufficient legal action to establish  
10 and/or maintain a substantial and positive relationship with the minor prior to the  
11 receipt of such notice.

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

- 14 a. has not maintained frequent and regular contact with the minor  
15 through frequent and regular visitation or frequent and regular  
16 communication to or with the minor, or  
17 b. has not exercised parental rights and responsibilities.

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

21 1. Physically or sexually abused the minor or a sibling of such minor or failed to  
22 protect the minor or a sibling of such minor from physical or sexual abuse that is heinous

1 or shocking to the court or that the minor or sibling of such minor has suffered severe  
2 harm or injury as a result of such physical or sexual abuse; or

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

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

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

20 L. Consent to adoption is not required from:

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

1 which renders the parent incapable of adequately and appropriately exercising parental  
2 rights, duties and responsibilities;

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

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

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

16 N. Consent to adoption is not required from:

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

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

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

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

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

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

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

17 2. The person proposed to serve as guardian ~~is a convicted felon~~ and each adult  
18 household member of the proposed guardian has a record of a criminal conviction,  
19 adjudication, protective order, or pending criminal charge. The petitioner shall present  
20 to the court an Oklahoma State Bureau of Investigation (OSBI) criminal background  
21 check and a Child Abuse/Neglect Information System Search result evidencing no record  
22 of abuse or neglect for the proposed guardian or any adult household member. The

1 petitioner shall disclose the case name, status, and final adjudication of any civil matter  
2 in state or federal court including, but not limited to, bankruptcy adjudications, involving  
3 the proposed guardian or any adult household member of the proposed guardian;

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

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

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

12 B. No minor or incapacitated person shall be appointed guardian of an  
13 incapacitated or partially incapacitated person.

14 C. If the person proposed to serve ~~is a convicted felon~~ has a criminal conviction,  
15 adjudication, protective order, or pending criminal charge, the court shall make further  
16 inquiry into the nature of the ~~felony~~ criminal conviction, adjudication, protective order,  
17 or pending criminal charge and the surrounding circumstances ~~surrounding the~~  
18 ~~conviction~~. The court shall appoint such person proposed to serve only upon determining  
19 that the facts underlying the ~~conviction~~ circumstances do not give rise to a reasonable  
20 belief that ~~that~~ the person proposed to serve will be unfaithful to or neglectful of ~~his~~ the  
21 fiduciary and care responsibilities of the guardian, and that the appointment is in the  
22 best interest of the ward.

1 D. If the person proposed to serve as guardian or limited guardian of the property  
2 of an incapacitated or partially incapacitated person is insolvent or has declared  
3 bankruptcy within five (5) years prior to the filing of the pleading proposing that such  
4 person serve, the court shall appoint such person only after giving due consideration to  
5 the nature and extent of the property of the ward and the anticipated actions necessary  
6 to manage the estate of the ward, and only upon a determination that such appointment  
7 is in the best interest of the ward. Insolvency or bankruptcy shall have no effect on the  
8 qualification of a person proposed to serve as guardian or limited guardian of the person  
9 of an incapacitated or partially incapacitated person.

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
2 dated 03-07-07 - DO PASS, As Amended and Coauthored.