

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

House Bill No. 3047

HOUSE BILL NO. 3047 - By: PETERSON (PAM), KERN AND MCAFFREY of the House.

An Act relating to children; amending 10 O.S. 2001, Section 7501-1.3, as amended by Section 8, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2007, Section 7501-1.3), which relates to definitions; modifying certain definition; amending 10 O.S. 2001, Section 7502-1.4, as amended by Section 1, Chapter 176, O.S.L. 2004 (10 O.S. Supp. 2007, Section 7502-1.4), which relates to foreign adoptions; simplifying procedures to readopt; amending 10 O.S. 2001, Section 7503-2.1, which relates to consent; providing for preference of child in certain circumstance; amending 10 O.S. 2001, Section 7503-2.3, which relates to permanent relinquishments; expanding list of those persons with whom permanent relinquishment may be made; amending 10 O.S. 2001, Section 7505-2.1, as amended by Section 1, Chapter 253, O.S.L. 2006 (10 O.S. Supp. 2007, Section 7505-2.1, which relates to preadoption termination of parental rights; clarifying language; amending 10 O.S. 2001, Section 7505-4.1, which relates to notice and hearing; authorizing certain hearings to be on the same day; providing for simultaneous notice; eliminating entitlement to notice under certain circumstance; amending 10 O.S. 2001, Section 7505-4.2, as amended by Section 2, Chapter 94, O.S.L. 2007 (10 O.S. Supp. 2007, Section 7505-4.2), which relates to exceptions to requirement of parental consent; modifying definition; adding provision not to be considered as support; modifying provisions for when consent is not required by father; specifying criteria for certain defense; 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 7501-1.3, as amended by
2 Section 8, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2007, Section 7501-1.3), is amended to
3 read as follows:

4 Section 7501-1.3 As used in the Oklahoma Adoption Code:

1 1. "Abandonment" includes, but is not limited to, the following:

2 a. the parent has left the minor alone or in the care of another who is not
3 the parent of the minor without identifying the minor or furnishing a
4 means of identification for the minor, the whereabouts of the parents
5 are unknown, and the minor's identity cannot be ascertained by the
6 exercise of reasonable diligence,

7 b. the parent has voluntarily left the minor alone or in the care of another
8 who is not the parent of the minor and expressed a willful intent by
9 words, actions, or omissions not to return for the minor, or

10 c. the parent fails to maintain a substantial and positive relationship
11 with the minor for a period of six (6) consecutive months out of the last
12 fourteen (14) months immediately preceding the filing of a petition for
13 termination of parental rights or a petition for adoption. For purposes
14 of this section, "establish and/or maintain a substantial, positive
15 relationship" includes but is not limited to:

16 (1) frequent and regular contact with the minor through frequent
17 and regular visitation or frequent, and regular communication
18 to or with the minor, and

19 (2) exercising parental rights and responsibilities. Incidental or
20 token visits or communications shall not be sufficient to
21 establish or maintain a substantial and positive relationship
22 with the minor.

1 The term "abandonment" shall not include when a parent has relinquished a minor to or
2 placed the minor in the custody of a licensed child-placing agency or other court-
3 appointed individual;

4 2. "Adoptee" means an individual who is adopted or is to be adopted;

5 3. "Adult" means an individual who has attained eighteen (18) years of age;

6 4. "Minor" means any person who has not attained the age of eighteen (18) years;

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

10 6. "Contested proceeding" means any proceeding pursuant to the Oklahoma
11 Adoption Code in which an interested party enters an appearance to contest the petition;

12 7. "Department" means the Department of Human Services;

13 8. "Direct placement adoption" means any adoption in which the minor is not
14 placed for adoption by the Department of Human Services or a child-placing agency;

15 9. "Guardian" means an individual, other than a parent, appointed by a court to be
16 the guardian of the person of a minor;

17 10. "Parent" means an individual who is the biological or adoptive parent of a child
18 or who is legally recognized as a mother or father of a child. The term "parent" does not
19 include an individual whose parental relationship to a child has been terminated or
20 legally determined not to exist;

21 11. "Permanent relinquishment" means the voluntary surrender of the rights of the
22 parent or guardian with respect to a minor, including legal and physical custody of the

1 minor, to a child-placing agency, Department of Human Services or any person with the
2 assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption;

3 12. "Putative father" means the father of a minor born out of wedlock or a minor
4 whose mother was married to another person at the time of the birth of the minor or
5 within the ten (10) months prior to the birth of the minor and includes, but is not limited
6 to, a man who has acknowledged or claims paternity of a minor, a man named by the
7 mother of the minor to be the father of the minor, or any man who is alleged to have
8 engaged in sexual intercourse with a woman during a possible time of conception;

9 13. "State" means any state, territory, or possession of the United States, the
10 commonwealth of Puerto Rico, and the District of Columbia; and

11 14. "Stepparent" means an individual who is the spouse or surviving spouse of a
12 parent of a minor, but who is not a legal parent of the minor.

13 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7502-1.4, as amended by
14 Section 1, Chapter 176, O.S.L. 2004 (10 O.S. Supp. 2007, Section 7502-1.4), is amended to
15 read as follows:

16 Section 7502-1.4 A. The courts of this state shall recognize a decree, judgment, or
17 final order creating the relationship of parent and child by adoption, issued by a court or
18 other governmental authority with appropriate jurisdiction in a foreign country or in
19 another state or territory of the United States. The rights and obligations of the parties
20 as to matters within the jurisdiction of this state shall be determined as though the
21 decree, judgment, or final order were issued by a court of this state. Except that, this

1 state, any of its agencies, or any court of this state shall not recognize an adoption by
2 more than one individual of the same sex from any other state or foreign jurisdiction.

3 B. An adoptive parent of a minor adopted outside of the United States with a
4 decree, judgment or final order issued by a court or other governmental authority with
5 appropriate jurisdiction in a foreign country may present the decree, judgment, or final
6 order or present proof that the minor has United States citizenship to the court in
7 combination with a petition for a name change. Upon presentation of a decree,
8 judgment, or final order or if the minor presents proof of United States citizenship, the
9 court shall order the State Registrar to prepare a supplementary certificate of birth for
10 the child as provided for in Section 7505-6.6 of this title, unless good cause is shown why
11 the certificate should not be issued.

12 C. A minor born outside of the United States without a decree, judgment, or final
13 adoption order issued by a court or other governmental authority with appropriate
14 jurisdiction in a foreign country may be adopted in Oklahoma if one or both of the
15 petitioners for adoption are citizens of Oklahoma and the minor is residing in Oklahoma
16 at the time the petition for adoption is filed.

17 D. An adoptive parent of a minor adopted outside of the United States may petition
18 to readopt the minor under Oklahoma law, if one or both of the petitioners are citizens of
19 Oklahoma and the minor is residing in Oklahoma at the time the petition for adoption is
20 filed.

1 E. A proceeding to adopt or readopt a minor born outside of the United States as
2 provided for in subsection C or subsection D of this section shall proceed pursuant to the
3 Oklahoma Adoption Code, with the following provisions:

4 1. The court may grant a decree of adoption without requiring notice to the
5 biological parent and without requiring the consent of the biological parent, if the
6 petitioner files with the petition for adoption a copy of the decree of adoption or of the
7 termination of parental rights granted by a judicial, administrative, or executive body of
8 the country of origin, or a document or documents from such a governmental body stating
9 that the biological parent has consented to the adoption, or stating that the parental
10 rights of the biological parent of the minor have been terminated, or stating that the
11 minor to be adopted has been relinquished by the biological parent or stating that the
12 minor has been abandoned. Any document in a foreign language shall be translated into
13 English by the Department of State or by a translator who shall certify the accuracy of
14 the translation, and a copy of the translation and certification shall be filed with the
15 court along with a copy of the original documents;

16 2. If a minor born outside of the United States is in the legal custody of a child-
17 placing agency at the time that the petition for adoption is filed, notice of the proceedings
18 shall be given to the child-placing agency prior to the hearing on the petition, and the
19 consent of the child-placing agency to the adoption shall be obtained pursuant to Section
20 7503-2.1 of this title prior to the granting of the decree of adoption; and

1 3. The court may waive the issuance of an interlocutory decree of adoption and the
2 waiting period of six (6) months provided in Sections 7505-6.1 and 7505-6.3 of this title,
3 and grant a final decree of adoption, if:

4 a. the minor has been in the home of petitioner for at least six (6) months
5 prior to the filing of the petition for adoption, and

6 b. a postplacement report has been submitted to the court.

7 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7503-2.1, is amended to
8 read as follows:

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

11 1. Both parents of the minor;

12 2. One parent of the minor, alone, if:

13 a. the other parent is dead,

14 b. the parental rights of the other parent have been terminated, or

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

17 3. The legal guardian of the person of the minor or the guardian ad litem of the
18 minor if both parents are dead or if the rights of the parents have been terminated by
19 judicial proceedings, or the consent of both parents is otherwise not required pursuant to
20 Section 7505-4.2 of this title, and ~~such~~ the guardian or guardian ad litem has authority
21 by order of the court appointing the guardian to consent to the adoption;

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

- 1 a. the minor has been permanently relinquished to ~~such~~ the agency by:
 - 2 (1) both parents, or
 - 3 (2) one parent alone if the other parent is dead, the parental rights
 - 4 of the other parent have been terminated, or the consent of the
 - 5 other parent is otherwise not required pursuant to Section 7505-
 - 6 4.2 of this title, or
- 7 b. the rights of both parents have been judicially terminated and custody
- 8 of the minor has been legally vested in such agency with authority to
- 9 consent to adoption of the minor; or

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

- 11 a. the parental rights of both parents have been judicially terminated,
- 12 and
- 13 b. the court that issued the custody order for the minor has consented to
- 14 adoption and a certified copy of its order containing its consent is filed
- 15 before the final decree.

16 B. 1. A parent of a minor born in wedlock or a parent who is sixteen (16) years of

17 age or older shall be deemed capable of giving consent to the adoption of a minor.

18 2. If the parent of a minor born out of wedlock is under sixteen (16) years of age,

19 that parent's consent to the adoption shall be deemed sufficient when:

- 20 a. given by ~~such~~ the minor parent before a judge of the district court, and
- 21 b. accompanied by the written consent of:
 - 22 (1) the legal guardian of the minor parent,

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

- 1 (2) the parents of the minor parent,
- 2 (3) the parent having custody of the minor parent, if the other
- 3 parent of the minor parent is deceased or the parents of the
- 4 minor parent are divorced, or
- 5 (4) the person having physical custody of the minor parent, if both
- 6 parents of the minor parent are deceased, or
- 7 c. accompanied by a finding of the court issuing the decree of adoption, if
- 8 consent cannot be secured from any individual whose consent is
- 9 required by subparagraph b of this paragraph, that:
- 10 (1) either notice was given by mail by the court to such person
- 11 directing the person to show cause at a time appointed by the
- 12 court, which shall be not less than ten (10) days from the date of
- 13 mailing, why the adoption should not be granted without the
- 14 individual's consent, or that notice was waived by the personal
- 15 appearance of the individual, and
- 16 (2) the individual did not appear to contest the adoption, or the
- 17 consent of the individual is unreasonably withheld.

18 C. If a minor to be adopted is twelve (12) years of age or older, the consent of the

19 minor to the adoption is required in addition to the consents required by subsections A

20 and B of this section before a decree of adoption may be granted, unless the court makes

21 a finding that it is not in the best interest of the minor to require the minor's consent.

22 Upon this finding, a court shall consider the preferences of the minor to be adopted. The

1 consent of the minor ~~must~~ shall be given before the court in such form as the court shall
2 direct.

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

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

16 SECTION 4. AMENDATORY 10 O.S. 2001, Section 7503-2.3, is amended to
17 read as follows:

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

- 1 B. Permanent relinquishments may be made only to:
- 2 1. The Department of Human Services;
- 3 2. A child-placing agency; ~~or~~
- 4 3. A guardian ad litem;
- 5 4. A legal guardian, other than the prospective adoptive parent of the child; or
- 6 ~~or~~ 5. Any other person, with the written consent of the Department or court.
- 7 C. A permanent relinquishment shall be in writing, executed before a judge of the
- 8 district court in this state, recorded by a court reporter and contain:
- 9 1. The date, place, and time of the execution of the permanent relinquishment;
- 10 2. The name and date of birth of the person executing the permanent
- 11 relinquishment;
- 12 3. The current mailing address, telephone number and social security number of
- 13 the person executing the permanent relinquishment;
- 14 4. Instructions that the permanent relinquishment is irrevocable, except upon the
- 15 specific grounds specified in Section 7503-2.7 of this title, upon which the permanent
- 16 relinquishment can be revoked and the manner in which a motion to set aside the
- 17 permanent relinquishment must be filed; and
- 18 5. The name of the person or agency as described in subsection B of this section to
- 19 whom the permanent relinquishment is being given and who shall have the right to give
- 20 consent to the minor's adoption.
- 21 D. A permanent relinquishment must state:

- 1 1. That the person executing the document is voluntarily and unequivocally
2 consenting to the adoption of the minor;
- 3 2. An understanding that after the permanent relinquishment is executed, it is
4 final and, except for fraud or duress, may not be revoked or set aside for any reason
5 except as otherwise authorized by the Oklahoma Adoption Code;
- 6 3. That the person executing the permanent relinquishment is represented by
7 counsel or has waived any right to counsel;
- 8 4. That the execution of the permanent relinquishment does not terminate any
9 duty of the person executing the permanent relinquishment to support the mother or the
10 minor until the adoption is completed;
- 11 5. That the person executing the permanent relinquishment has not received or
12 been promised any money or anything of value for the permanent relinquishment, except
13 for payments authorized by law;
- 14 6. Whether the individual executing the permanent relinquishment is a member of
15 an Indian tribe and whether the minor is eligible for membership or the minor is a
16 member of an Indian tribe;
- 17 7. That the person believes the adoption of the minor is in the minor's best interest;
18 and
- 19 8. That the person executing the permanent relinquishment has been advised that
20 an adult adopted person born in Oklahoma, whose decree of adoption is finalized after
21 November 1, 1997, may obtain a copy of such person's original certificate of birth unless

1 affidavits of nondisclosure have been filed pursuant to Section 7503-2.5 of this title and
2 that the relinquishing parent may sign an affidavit of nondisclosure.

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

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

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

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

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

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

16 H. A permanent relinquishment shall be signed before any judge of a court having
17 probate or adoption jurisdiction in this state or in the state of residence of the person
18 executing the permanent relinquishment.

19 I. 1. a. If an individual permanently relinquishing the child resides in a
20 country or place other than the United States of America, other than a
21 member of the United States Armed Services stationed abroad, the
22 permanent relinquishment of the individual may be obtained by a

1 written instrument signed by such person and acknowledged before an
2 officer of the legal subdivision of the government of the place of such
3 person's residence who is authorized to administer oaths under the
4 laws of such country or place.

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

17 2. If an individual permanently relinquishing the child is a member of the United
18 States Armed Services stationed in a country or place other than the United States, the
19 individual's permanent relinquishment may be acknowledged before an officer of the
20 Judge Advocate General's Office or other legal officer possessing the authority to
21 administer oaths.

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

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

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

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

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

1 SECTION 5. AMENDATORY 10 O.S. 2001, Section 7505-2.1, as amended by
2 Section 1, Chapter 253, O.S.L. 2006 (10 O.S. Supp. 2007, Section 7505-2.1), is amended to
3 read as follows:

4 Section 7505-2.1 A. 1. Prior to the filing of a petition for adoption, a child-placing
5 agency, attorney, or prospective adoptive parent to whom a parent having legal custody
6 has executed a consent to adoption or has permanently relinquished a minor born out of
7 wedlock may file a petition for the termination of the parental rights of a putative father
8 or a parent of the child. The petition shall be filed with the district court of the county in
9 which the relinquishment was executed or in the county in which the putative father, a
10 parent, the petitioner, or the minor resides at the time of the filing of the petition.

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

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

18 2. The notice shall contain the name of the putative father or parent, or if
19 unknown, the name of the minor, the date of birth of the minor, the date of the hearing,
20 and the ground or grounds for which termination of parental rights is sought. The notice
21 shall apprise the putative father or parent of his or her legal rights and shall include a
22 clear statement that failure to appear at the hearing shall constitute a denial of interest

1 in the minor which denial may result, without further notice of this proceeding or any
2 subsequent proceeding, in the termination of his or her parental rights and the transfer
3 of the care, custody or guardianship of the minor or in the adoption of the minor.

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

17 4. A putative father or parent may waive the right to notice pursuant to this
18 section. The waiver shall be in writing and shall include a statement affirming that the
19 person signing the waiver understands that the waiver shall constitute grounds for the
20 termination of the parental rights of such person pursuant to the provisions of this
21 section and Section 7505-4.2 of this title. A putative father or legal or biological father
22 may also waive his right to notice pursuant to this section, by signing an extrajudicial

1 consent pursuant to Section 7503-2.6 of this title, or by waiving notice on a form filed
2 with the Paternity Registry of the Department of Human Services, or by failing to
3 register with the Paternity Registry of the Department of Human Services after receiving
4 a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title.

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

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

11 1. Accept a permanent relinquishment or consent to adoption executed by the
12 putative father or parent of the minor pursuant to Sections 7503-2.1, 7503-2.3 and 7503-
13 2.4 of this title; or

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

17 E. 1. If the court at the hearing determines that the putative father is the
18 biological father of the minor, that the adoption requires the consent of the putative
19 father, that the putative father will not consent, and the court does not terminate the
20 parental rights of the putative father or does not terminate the rights of the other
21 parents, then the court shall schedule a separate hearing to issue an appropriate order
22 for the legal and physical custody of the minor according to the best interests of the

1 minor, if the court has jurisdiction to issue a custody order. Provided, no such hearing
2 shall be scheduled if a preexisting custody order remains in effect.

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

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

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

18 5. The child shall be represented at this hearing by an attorney pursuant to Section
19 7505-1.2 of this title.

20 F. The court shall terminate the rights of a putative father or parent if the person
21 fails to appear at the hearing on the petition to terminate parental rights or if a waiver of

1 notice pursuant to paragraph 4 of subsection B of this section has been filed with the
2 court.

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

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

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

16 1. In an appeal concerning the termination of parental rights pursuant to this
17 section, the designation of record by the appellant shall be filed in the trial court within
18 ten (10) days after the date of the judgment. The counter designation of record by the
19 appellee shall be filed in the trial court ten (10) days after designation of record by the
20 appellant is filed in the trial court.

21 2. All appeals of cases concerning the termination of parental rights pursuant to
22 this section shall be initiated by filing a petition in error in the Supreme Court within

1 thirty (30) days of the filing of the order, judgment, or decree appealed from. The record
2 on appeal shall be completed within thirty (30) days from the filing of the petition in
3 error. Any response to the petition in error shall be filed within twenty (20) days from
4 the filing of the petition in error.

5 3. The briefing schedule is established as follows:

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

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

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

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

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

13 SECTION 6. AMENDATORY 10 O.S. 2001, Section 7505-4.1, is amended to
14 read as follows:

15 Section 7505-4.1 A. If a consent to adoption or permanent relinquishment for
16 adoption has not been obtained from both parents of a minor who is the subject of a
17 petition for adoption, and the rights of the nonconsenting parent or parents have not
18 previously been terminated, the petitioner for adoption, a consenting parent, or a legal
19 guardian or legal custodian of the minor to be adopted must file an application to the
20 court stating the reason that the consent or relinquishment of the parent or parents is
21 not necessary. In the alternative, if the nonconsenting parent is a putative father of a
22 minor born out of wedlock, the petitioner for adoption, a consenting parent, or a legal

1 guardian or legal custodian of the minor may file an application to terminate the
2 parental rights of the putative father. The grounds for terminating a putative father
3 pursuant to this section shall be identical to the grounds for permitting an adoption
4 without the consent of a parent, pursuant to Section 7505-4.2 of this title.

5 B. A hearing on an application for adoption without consent or an application to
6 terminate parental rights cannot be combined with the hearing on the application for a
7 final decree of adoption. For good cause shown, a hearing on the application for a final
8 decree of adoption may be heard as early as the same day as a hearing on an application
9 for adoption without consent or an application to terminate parental rights, without
10 prejudice to the rights of any parties to appeal from the order terminating parental
11 rights. Notice for the hearings provided for in this subsection may be served
12 simultaneously.

13 C. 1. Prior to the hearing on the application to permit the adoption of the minor
14 without the consent or relinquishment of a parent, or the application to terminate the
15 rights of a putative father filed pursuant to this section, notice of the hearing on the
16 application and a copy of the application shall be served upon the parent or putative
17 father who is the subject of the application in the same manner as summons is served in
18 civil cases, not less than fifteen (15) days prior to the hearing.

19 2. The notice shall contain the name of the parent, putative father, or if the father
20 is unknown, the name of the child, date of birth of the child, the date of the hearing, and
21 the ground or grounds for which application for adoption without consent or
22 relinquishment or termination of parental rights is sought. The notice shall apprise the

1 parent or putative father of the parent's legal rights and shall include a clear statement
2 that failure to appear at the hearing shall constitute a denial of interest in the child,
3 which denial may result, without further notice of this proceeding or any subsequent
4 proceeding, in the granting of the application for adoption without consent or permanent
5 relinquishment or in the termination of the putative father's parental rights and in the
6 child's adoption.

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

19 4. A parent or putative father may waive such person's right to notice pursuant to
20 this section. The waiver, signed by the parent or putative father, shall include a
21 statement affirming that the person signing the waiver understands that the waiver
22 shall constitute grounds for ordering adoption without consent of the parent or for the

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

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

12 E. At the hearing on an application to permit adoption without the consent or
13 relinquishment of a parent, the court may determine whether the minor is eligible for
14 adoption pursuant to Section 7505-4.2 of this title. At the hearing on an application to
15 terminate the parental rights of a putative father, the court may, if it is in the best
16 interests of the minor, determine that the consent of the putative father to the adoption
17 of the minor is not required, and terminate any parental rights which the putative father
18 may have, as provided in Section 7505-4.2 of this title. If a putative father has neither
19 appeared at the hearing after notice, nor established that he is the parent of the child,
20 then he is not entitled to notice as provided for in Section 7505-6.3 of this title.

1 F. The court shall terminate the parental rights of a putative father if he fails to
2 appear at the hearing on the application to terminate his parental rights or if he has
3 waived notice pursuant to paragraph 4 of subsection C of this section.

4 G. A proceeding pursuant to this section for determination of necessity of parental
5 consent or for termination of parental rights shall be heard by the court without a jury.

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

- 14 I. 1. a. An appeal may be taken from any final order, judgment, or decree
15 terminating parental rights rendered pursuant to this section to the
16 Supreme Court by any person aggrieved thereby, in the manner
17 provided for appeals from the court as provided in this subsection.
- 18 b. An appeal from an order determining a child eligible for adoption
19 which does not terminate parental rights may be taken in the same
20 manner provided for appeals from the court as provided in this
21 subsection. The failure of a parent to appeal from an order declaring a
22 child eligible for adoption without consent of the parent which does not

1 terminate parental rights shall not preclude such parent from
2 asserting error in the order after the final decree is rendered.

3 2. In an appeal concerning the termination of parental rights for purposes of
4 adoption pursuant to this section or from an order determining a child eligible for
5 adoption which does not terminate parental rights pursuant to this section, the
6 appellant's designation of record shall be filed in the trial court within ten (10) days after
7 the date of the judgment or order. Appellee's counter designation of record shall be filed
8 in the trial court ten (10) days after appellant's designation of record is filed in the trial
9 court.

10 3. All appeals of cases concerning the termination of parental rights for purposes of
11 adoption or an order determining a child eligible for adoption which does not terminate
12 parental rights pursuant to this section shall be initiated by filing a petition in error in
13 the Supreme Court within thirty (30) days of the filing of the order, judgment, or decree
14 appealed from. The record on appeal shall be completed within thirty (30) days from the
15 filing of the petition in error. Any response to the petition in error shall be filed within
16 twenty (20) days from the filing of the petition in error.

17 4. The briefing schedule is established as follows:

- 18 a. appellant's brief in chief shall be filed twenty (20) days after the trial
19 court clerk notifies all parties that the record is complete and such
20 notice has been filed in the office of the Clerk of the Supreme Court,
21 b. appellant's answer brief shall be filed fifteen (15) days after the
22 appellant's brief in chief is filed, and

1 3. A determination that the consent to adoption is not required from the parent of a
2 minor shall not, by itself, act to relieve such parent of the obligation to provide for the
3 support of the minor as otherwise required by law. The duty of the parent to support the
4 minor child shall not be terminated until such time as a final decree of adoption has been
5 entered.

6 SECTION 7. AMENDATORY 10 O.S. 2001, Section 7505-4.2, as amended by
7 Section 2, Chapter 94, O.S.L. 2007 (10 O.S. Supp. 2007, Section 7505-4.2), is amended to
8 read as follows:

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

12 B. Consent to adoption is not required from a parent or putative father who, for a
13 period of twelve (12) consecutive months out of the last fourteen (14) months immediately
14 preceding the filing of ~~a petition for adoption of a child~~ an application for determination
15 that the child is eligible for adoption without the consent of the parent or putative father
16 pursuant to Section 7505-4.1 of this title, or a petition to terminate parental rights
17 pursuant to Section 7505-2.1 of this title, has refused, neglected, or willfully failed;
18 ~~refused, or neglected~~ to contribute to the support of ~~such~~ the minor:

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

21 2. According to ~~such parent's~~ the financial ability of the parent or putative father to
22 contribute to ~~such~~ the minor's support if no provision for support is provided in an order.

1 For the purposes of this section, ~~“contribute to the support for of the minor shall benefit~~
2 ~~the minor by providing a necessity”~~ means to either actually provide or make multiple
3 attempts to provide the minor’s necessities such as food, clothing, housing, and medical
4 care. Payments ~~that~~ which shall not be considered support shall include, but are not
5 limited to:

- 6 a. genetic and drug testing,
- 7 b. supervised visitation,
- 8 c. counseling for any person other than the minor,
- 9 d. court fees and costs,
- 10 e. restitution payments, ~~and~~
- 11 f. attorney fees for any person or entity other than the minor’s attorney,
12 and
- 13 g. transportation costs for any person other than the mother during
14 pregnancy or the minor, unless such transportation expenses are
15 specifically ordered in lieu of support in a court order.

16 The incarceration of a parent or putative father in and of itself shall not prevent the
17 adoption of a minor without consent.

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

- 20 1. ~~The minor is placed for adoption within ninety (90) days of birth, and the father~~
21 ~~or putative father fails to show he has exercised parental rights or~~ fulfilled parental
22 duties towards the minor, including, but not limited to, failure to contribute contributing

1 to the support of the mother of the ~~child~~ minor to the extent of his financial ability during
2 her term of pregnancy; or

3 2. ~~The minor is placed for adoption within~~ For a period of twelve (12) consecutive
4 months of the last fourteen (14) months of birth, and immediately preceding the filing of
5 a petition to terminate parental rights or a petition for adoption the father or putative
6 father fails to show that he has exercised parental rights or fulfilled parental duties
7 towards the minor, including, but not limited to, ~~failure to contribute~~ contributing to the
8 support of the minor to the extent of his financial ability, which may include
9 consideration of his failure to contribute to the support of the mother of the ~~child~~ minor
10 to the extent of his financial ability during her term of pregnancy. ~~Failure~~ A father's or
11 putative father's failure to contribute to the support of the mother during her term of
12 pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption
13 without ~~such~~ the father's or putative father's consent.

14 The incarceration of a parent or putative father in and of itself shall not prevent the
15 adoption of a minor without consent.

16 D. In any case where a father or putative father of a minor born out of wedlock
17 claims that, prior to the receipt of notice of the hearing provided for in ~~Sections~~ Section
18 7505-2.1 and or Section 7505-4.1 of this title, he had been specifically denied knowledge
19 of the existence of the minor or denied the opportunity to exercise parental rights and
20 fulfill parental duties toward the minor, such father or putative father must prove to the
21 satisfaction of the court that he made sufficient attempts to discover if he had fathered a

1 minor or made sufficient attempts to exercise parental rights and fulfill parental duties
2 toward the minor prior to the receipt of notice. For purposes of this section:

3 1. A single attempt by a father or putative father is insufficient;

4 2. Offers made by a father or putative father during the mother's term of pregnancy
5 to take a paternity test are insufficient; and

6 3. The required knowledge is that knowledge which is imputed to a male person,
7 based upon his having had sexual relations with a female person, and the male person's
8 concomitant responsibilities to:

9 a. inform himself of the existence and needs of any child conceived
10 therefrom, and

11 b. exercise parental rights and fulfill parental duties toward that child
12 even before the child's birth, including but not limited to the person's
13 having acted timely, positively, and affirmatively to seize his parental
14 opportunity interest.

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

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

1 G. Consent to adoption is not required from a parent or putative father who is
2 entitled to custody of a minor and has abandoned the minor.

3 H. 1. Consent to adoption is not required from a parent or putative father who fails
4 to establish and/or maintain a substantial and positive relationship with a minor for a
5 period of twelve (12) consecutive months out of the last fourteen (14) months immediately
6 preceding the filing of a ~~petition for adoption of the child~~ an application for determination
7 that the child is eligible for adoption without the consent of the parent or putative father
8 pursuant to Section 7505-4.1 of this title or a petition to terminate parental rights
9 pursuant to Section 7505-2.1 of this title.

10 2. In any case where a parent or putative father of a minor claims that prior to the
11 receipt of notice of the hearing provided for in ~~Sections~~ Section 7505-2.1 ~~and~~ or Section
12 7505-4.1 of this title, such ~~the~~ the parent or putative father had been denied the opportunity
13 to establish and/or maintain a substantial and positive relationship with the minor by
14 the custodian of the minor, ~~such~~ the the parent or putative father shall prove to the
15 satisfaction of the court that he or she has taken sufficient legal action to establish
16 and/or maintain a substantial and positive relationship with the minor prior to the
17 receipt of such notice.

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

- 20 a. has not maintained frequent and regular contact with the minor
21 through frequent and regular visitation or frequent and regular
22 communication to or with the minor, or

1 following factors, among others: the duration of incarceration and its detrimental effect
2 on the parent/child relationship; any previous incarcerations; any history of criminal
3 behavior, including crimes against children; the age of the minor; the evidence of abuse
4 or neglect of the minor or siblings of the minor by the parent; and the current
5 relationship between the parent and the minor and the manner in which the parent has
6 exercised parental rights and fulfilled parental duties in the past.

7 L. Consent to adoption is not required from:

8 1. A parent who has a mental illness or mental deficiency, as defined by
9 paragraphs f and g of Article II of Section 6-201 of Title 43A of the Oklahoma Statutes,
10 which renders the parent incapable of adequately and appropriately exercising parental
11 rights, and fulfilling parental duties and responsibilities;

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

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

17 M. Consent to adoption is not required from a putative father who has been served
18 with a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title and who
19 either returns the form to the Paternity Registry of the Department of Human Services
20 or agency or attorney who served him explicitly waiving a right to notice and legal rights
21 to the minor, ~~or who fails to return the form pursuant to Section 7503-3.1 of this title in~~
22 time for the form to be received by the Paternity Registry of the Department of Human

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

1 Services or the agency or attorney who served him within thirty (30) days from the date
2 the Notice of Plan for Adoption was served upon the putative father.

3 N. Consent to adoption is not required from:

4 1. An individual who has permanently relinquished his or her parental rights and
5 responsibilities to the minor pursuant to the Oklahoma Adoption Code;

6 2. An individual whose parental relationship to a minor has been legally
7 terminated or legally determined not to exist, including but not limited to a putative
8 father not acting timely, positively, and affirmatively to seize his parental opportunity
9 interest; or

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

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

22 SECTION 8. This act shall become effective November 1, 2008.

1 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 03-05-08 -
2 DO PASS, As Coauthored.