

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 2174

By: Nelson

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7 COMMITTEE SUBSTITUTE

8 An Act relating to children; amending 10 O.S. 2001, Section 7502-1.2, which
9 relates to adoption proceeding venues; making venue mandatory; expanding
10 venue; amending 10 O.S. 2001, Section 7505-1.2, which relates to appointment
11 of attorneys in adoption proceedings; authorizing appointment of certain
12 attorney; amending 10 O.S. 2001, Section 7505-3.2, as amended by Section 2,
13 Chapter 57, O.S.L. 2005 (10 O.S. Supp. 2008, Section 7505-3.2), which relates
14 to certain required adoption-related disclosures; specifying where certain
15 expense petitions shall be filed; requiring a Disclosure Statement of Adoption-
16 related Costs and Expenditures; specifying contents of statement; requiring
17 statement to be filed before final decree is ordered; providing that statement is a
18 public record; providing that certain statement information not be made public;
19 amending 21 O.S. 2001, Section 866, as amended by Section 3, Chapter 253,
20 O.S.L. 2006 (21 O.S. Supp. 2008, Section 866), which relates to child
21 trafficking; modifying definition of child trafficking; and providing an effective
22 date.

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

24 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7502-1.2, is amended to read as
follows:

Section 7502-1.2 Proceedings for adoption ~~may~~ shall be brought in the district court in the
county where the petitioners or the child to be adopted reside, in Tulsa County or in Oklahoma County.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-1.2, is amended to read as
follows:

1 Section 7505-1.2 A. 1. In a proceeding pursuant to the Oklahoma Adoption Code, the court
2 shall appoint an attorney for a minor in a contested proceeding pursuant to the Oklahoma Adoption
3 Code and may appoint an attorney for a child in an uncontested proceeding or appoint an attorney for
4 the child to examine all expenses and attorney fees presented to the court for approval.

5 2. The attorney shall be charged with the representation of the child. To that end, the attorney
6 shall make such further investigation as the attorney deems necessary to ascertain the facts, to
7 interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make
8 recommendations to the court, and participate further in the proceedings to the degree appropriate for
9 adequately representing the child.

10 3. The attorney shall be given access to all reports relevant to the case and to any reports of
11 examination of the child's parents or other custodian made pursuant to this section.

12 4. Upon approval of the court, the attorney may be allowed a reasonable fee for services
13 provided by this section.

14 B. 1. The court may appoint a separate guardian ad litem for the minor in a contested
15 proceeding and shall appoint a separate guardian ad litem upon the request of a party, the minor, the
16 attorney of the minor, prospective adoptive parent, or a person or agency having physical or legal
17 custody of the child.

18 2. The guardian ad litem shall not be a district attorney, an employee of the office of the district
19 attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public
20 agency having duties or responsibilities towards the minor.

21 3. The guardian ad litem shall be appointed to objectively advocate on behalf of the minor and
22 act as an officer of the court to investigate all matters concerning the best interests of the minor. In
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1 addition to other duties required by the court and as specified by the court, a guardian ad litem shall
2 have the following responsibilities:

- 3 a. review relevant documents, reports and other information,
- 4 b. meet with and/or observe the child,
- 5 c. consider the child's wishes, as appropriate,
- 6 d. interview parents, caregivers and others with knowledge relevant to the case,
- 7 e. advocate for the minor's best interests by participating in appropriate aspects of
8 the case and advocating for appropriate community and other services when
9 necessary,
- 10 f. maintain the confidentiality of information related to the case,
- 11 g. monitor the minor's best interests throughout any judicial proceeding, and
- 12 h. advise the court of his or her findings and recommendations, if any, and the facts
13 upon which they are based.

14 4. The guardian ad litem shall be given access to the court file and access to all records and
15 reports relevant to the case and to any records and reports of examination of the minor's parent or other
16 custodian, as specified by the court, subject to such protective orders regarding identifying information
17 as the court deems advisable.

18 5. Any person participating in a judicial proceeding as a guardian ad litem shall be presumed
19 prima facie to be acting in good faith and in so doing shall be immune from any civil liability that
20 otherwise might be incurred or imposed.

21 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7505-3.2, as amended by Section 2,
22 Chapter 57, O.S.L. 2005 (10 O.S. Supp. 2008, Section 7505-3.2), is amended to read as follows:
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1 Section 7505-3.2 A. 1. An affidavit shall be attached to the petition for adoption, or may be
2 filed after the filing of the petition for adoption, but prior to the final decree of adoption, which
3 discloses to the court all of the costs, funds, or monies expended by the adoptive family or expected to
4 be expended in connection with the adoption of a minor.

5 2. No final decree of adoption shall be entered until the court is satisfied that all costs and
6 expenses have been disclosed, are reasonable, and that the costs and expenses do not violate the
7 provisions of subsection B of this section. Upon its review of the affidavit of monies expended, the
8 court shall in writing disapprove any expenditure that the court deems unreasonable or in violation of
9 Sections 865 through 869 of Title 21 of the Oklahoma Statutes and, to the extent necessary to comply
10 with Oklahoma law, shall order reimbursement of any consideration given in violation of Sections 865
11 through 869 of Title 21 of the Oklahoma Statutes. Payments made pursuant to this section shall not be
12 a violation of Sections 865 through 869 of Title 21 of the Oklahoma Statutes.

13 B. 1. Except as otherwise specifically provided by law, the following list of adoption-related
14 costs and expenses specified in this paragraph may be deemed proper items for a person to pay in
15 connection with an adoption:

- 16 a. reasonable attorney fees and court costs,
- 17 b. reasonable medical expenses for birth mother and minor to be adopted,
- 18 c. reasonable adoption counseling expenses for birth parents before and after the
19 birth of the minor, not to exceed six (6) months from placement of the minor,
- 20 d. reasonable fees of a licensed child-placement agency,
- 21 e. reasonable living expenses for housing, food, clothing, utilities, and other
22 necessities of the birth mother that are incurred during the adoption planning
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1 process or during the pregnancy, not to exceed two (2) months after the birth of
2 the minor or after the consent or relinquishment of the birth mother,

3 f. reasonable costs for travel or transportation of the birth mother or minor as same
4 is incurred for medical or adoption placement needs,

5 g. reasonable expenses for a home study, and

6 h. reasonable expenses legally required by any governmental entity related to the
7 adoption of a minor.

8 2. In addition, all expenses approved by the court should be commensurate with other customary
9 fees for similar services by persons of equivalent experience and training where the services are
10 performed. Any services provided outside this state shall be allowed in an amount as if the services
11 had been performed within the State of Oklahoma.

12 3. The provisions of this subsection shall apply to living and transportation expenses incurred
13 after the biological mother of the minor contacts the child-placing agency or attorney for adoption
14 services.

15 4. The provisions of this subsection shall not prohibit a court from extending any time period, or
16 including any additional costs and expenses in connection with an adoption other than those specified
17 in this subsection based on unusual circumstances or need.

18 5. Except as otherwise ordered by the court except for good cause shown, all payments made
19 pursuant to this section shall be paid directly to the third-party provider of services or goods.

20 C. Any person desiring to pay living and transportation expenses to or on behalf of a birth parent
21 is authorized to expend an initial amount not to exceed Five Hundred Dollars (\$500.00) for such costs
22 and expenses without first obtaining court approval as required by paragraph 1 of subsection D of this
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1 section. Any such costs and expenses shall be disclosed as is otherwise required by the Oklahoma
2 Adoption Code.

3 D. 1. Except for the amount authorized by subsection C of this section, the payment of any
4 living or transportation expenses for benefit of the birth mother as authorized in subparagraphs e and f
5 of paragraph 1 of subsection B of this title shall be approved in advance by the court.

6 2. The person, attorney, or licensed child-placing agency desiring to pay living or transportation
7 expenses on behalf of a birth mother which exceed the amount in subsection C of this section shall file
8 a petition for an order approving payment of adoption-related expenses.

9 3. The petition for an order approving payment of adoption-related expenses ~~may~~ shall be filed
10 in the district court where the ~~birth mother resides, in the county where the petitioner, attorney, or~~
11 ~~child placing agency is located, or in the county where the adoption petition is to be filed, as provided~~
12 in Section 7502-1.2 of this title.

13 4. The petition shall be captioned: "In the matter of Baby (name)." The petition shall include a
14 listing of all anticipated living or transportation expenses to be paid on behalf of the birth mother for
15 which court approval is being sought. If additional expenditures not previously authorized by the court
16 are needed on behalf of the birth mother, an amended petition may be filed with the court.

17 5. The petition shall be heard by the court within ten (10) days of filing. The court clerk shall
18 charge the same cost for a petition for payment of expenses as is charged for the filing of an adoption
19 petition. In the event an adoption petition is later filed in the same county, the adoption petition shall
20 be filed as an amended petition within the same case in which payment for expenses was approved and
21 no additional court costs shall be required. In the event a petition for preadoption termination of
22 parental rights is later filed in the same county, the court clerk shall not assess an additional filing fee
23 and may use the same case number as for the petition for adoption.
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1 6. Any order authorizing payment shall be attached to a petition for adoption. If no adoption
2 petition is filed, the court shall retain jurisdiction to enter any orders deemed appropriate regarding the
3 reimbursement of costs and expenses paid. If the child is placed for adoption outside the State of
4 Oklahoma, any such order shall be submitted to the Interstate Compact of the Placement of Children
5 and to the court in the other state where the petition for adoption is to be filed.

6 E. 1. In addition to the adoptive family affidavit requirement of subsection A of this section, a
7 Disclosure Statement of Adoption-related Costs and Expenditures shall be prepared in writing by the
8 attorney, child-placing agency, or person facilitating in a direct-placement adoption. The Disclosure
9 Statement of Adoption-related Costs and Expenditures shall include a declaration of all fees, expenses,
10 and costs charged or expected to be charged for the adoption including, but not limited to, the
11 following:

- 12 a. retainer fees, the hourly rate, and the number of hours billed for the adoption,
- 13 b. any fee charged for preplacement or other home studies of any prospective birth
14 parents, regardless of whether the home study was performed by an outside
15 agency,
- 16 c. any costs, fees or expenses or any other thing of value paid to or on behalf of the
17 birth parents related to the adoption of a minor by any party other than the
18 adoptive parents, and
- 19 d. any other fees and expenses related to the adoption not otherwise specifically
20 listed in this section.

21 2. The Disclosure Statement of Adoption-related Costs and Expenditures containing true and
22 accurate information shall be filed before the final decree of adoption is ordered in each adoption of a
23 minor in this state. The statement shall be a public record; provided, that any information identifying
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1 the attorney, child-placing agency, or person facilitating in the direct adoption shall not be made
2 public. In addition, the identity of the child, the adoptive parents, and the birth parents shall not be
3 made public.

4 SECTION 4. AMENDATORY 21 O.S. 2001, Section 866, as amended by Section 3,
5 Chapter 253, O.S.L. 2006 (21 O.S. Supp. 2008, Section 866), is amended to read as follows:

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

- 8 a. the acceptance, solicitation, offer, payment or transfer of any compensation, in
9 money, property or other thing of value, at any time, by any person in connection
10 with the acquisition or transfer of the legal or physical custody or adoption of a
11 minor child, except as ordered by the court or except as otherwise provided by
12 Section 7505-3.2 of Title 10 of the Oklahoma Statutes,
- 13 b. the acceptance or solicitation of any compensation, in money, property or other
14 thing of value, by any person or organization for services performed, rendered or
15 purported to be performed to facilitate or assist in the adoption or foster care
16 placement of a minor child, except by the Department of Human Services, a
17 child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care
18 Facilities Licensing Act, or an attorney authorized to practice law in Oklahoma.
19 The provisions of this paragraph shall not prohibit an attorney licensed to practice
20 law in another state or an out-of-state licensed child-placing agency from
21 receiving compensation when working with an attorney licensed in this state who
22 is, or when working with a child-placing agency licensed in this state which is,
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1 providing adoption services or other services necessary for placing a child in an
2 adoptive arrangement,

3 c. bringing or causing to be brought into this state or sending or causing to be sent
4 outside this state any child for the purpose of placing such child in a foster home
5 or for the adoption thereof and thereafter refusing to comply upon request with
6 the Interstate Compact on the Placement of Children. Provided, however, that
7 this provision shall have no application to the parent or guardian of the child nor
8 to a person bringing said child into this state for the purpose of adopting the child
9 into such person's own family,

10 d. the solicitation or receipt of any money or any other thing of value for expenses
11 related to the placement of a child for the purpose of an adoption by the birth
12 parent of the child who at the time of the solicitation or receipt had no intent to
13 consent to eventual adoption,

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

18 f. (1) the receipt of any money or any other thing of value for expenses related
19 to the placement of a child for adoption by a birth parent, child-placing
20 agency or attorney who receives, from one or more parties, an aggregate
21 amount of One Thousand Dollars (\$1,000.00) or more in total any money
22 or any other thing of value without ~~first~~ disclosing to each prospective
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1 adoptive parent, child-placing agency, ~~or~~ and attorney the receipt of ~~these~~
2 ~~expenses~~ any money or any other thing of value immediately upon receipt.

3 (2) the solicitation or receipt of any money or any other thing of value by a
4 birth parent, an attorney or child-placing agency for expenses related to
5 the placement of a child for the purpose of adoption from more than one
6 prospective adoptive family for the adoption of one child. A birth parent,
7 child-placing agency or attorney shall not represent that a child is, or will
8 be, available for adoption to more than one prospective adoptive family at
9 one time,

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

16 h. (1) advertisements for and solicitation of a woman who is pregnant to induce
17 her to place her child upon birth for adoption, except by a child-placing
18 agency licensed in this state or an attorney authorized to practice law in
19 Oklahoma. Nothing in this section shall prohibit a person from
20 advertising to solicit a pregnant woman to consider adoptive placement
21 with the person or to locate a child for an adoptive placement into the
22 person's own home, provided that such person has received a favorable
23 preplacement home study recommendation in accordance with Section
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1 7505-5.1 of Title 10 of the Oklahoma Statutes, which shall be verified by
2 the signed written statement of the person or agency which performed the
3 home study, and provided that no money or other thing of value is offered
4 as part of such an inducement except as ordered by the court or except as
5 otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma
6 Statutes.

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

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

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

16 B. 1. No person shall knowingly publish for circulation within the borders of the State of
17 Oklahoma an advertisement of any kind in any print, broadcast or electronic medium, including, but
18 not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which
19 violates subparagraph g or h of paragraph 1 of subsection A of this section.

20 2. Any person violating the provisions of this subsection shall, upon conviction thereof, be
21 guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars
22 (\$5,000.00) per violation.
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1 C. The payment or acceptance of costs and expenses listed in Section 7505-3.2 of Title 10 of the
2 Oklahoma Statutes shall not be a violation of this section as long as the petitioner or birth parent has
3 complied with the applicable procedure specified in Section 7505-3.2 of Title 10 of the Oklahoma
4 Statutes and such costs and expenses are approved by the court.

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

8 SECTION 5. This act shall become effective November 1, 2009.

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