

1 ENGROSSED HOUSE
2 BILL NO. 2174

By: Nelson, McAffrey,
Rousselot, Sherrer, Kern
and Peterson of the House

3
4 and

Russell of the Senate

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7
8 An Act relating to children; amending 10 O.S. 2001,
9 Section 7502-1.2, which relates to adoption
10 proceeding venues; making venue mandatory; expanding
11 venue; amending 10 O.S. 2001, Section 7505-1.2, which
12 relates to appointment of attorneys in adoption
13 proceedings; authorizing appointment of certain
14 attorney; amending 10 O.S. 2001, Section 7505-3.2, as
15 amended by Section 2, Chapter 57, O.S.L. 2005 (10
16 O.S. Supp. 2008, Section 7505-3.2), which relates to
17 certain required adoption-related disclosures;
18 specifying where certain expense petitions shall be
19 filed; requiring a Disclosure Statement of Adoption-
20 related Costs and Expenditures; specifying contents
of statement; requiring statement to be filed before
final decree is ordered; providing that statement is
a public record; providing that certain statement
information not be made public; amending 21 O.S.
2001, Section 866, as amended by Section 3, Chapter
253, O.S.L. 2006 (21 O.S. Supp. 2008, Section 866),
which relates to child trafficking; modifying
definition of child trafficking; and providing an
effective date.

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

22 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7502-1.2, is
23 amended to read as follows:
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1 Section 7502-1.2 Proceedings for adoption ~~may~~ shall be brought
2 in the district court in the county where the petitioners or the
3 child to be adopted reside, in Tulsa County or in Oklahoma County.

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

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

12 2. The attorney shall be charged with the representation of the
13 child. To that end, the attorney shall make such further
14 investigation as the attorney deems necessary to ascertain the
15 facts, to interview witnesses, examine and cross-examine witnesses
16 at the preliminary hearing and trial, make recommendations to the
17 court, and participate further in the proceedings to the degree
18 appropriate for adequately representing the child.

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

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

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

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

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

- 16 a. review relevant documents, reports and other
17 information,
- 18 b. meet with and/or observe the child,
- 19 c. consider the child's wishes, as appropriate,
- 20 d. interview parents, caregivers and others with
21 knowledge relevant to the case,
- 22 e. advocate for the minor's best interests by
23 participating in appropriate aspects of the case and
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1 advocating for appropriate community and other
2 services when necessary,

3 f. maintain the confidentiality of information related to
4 the case,

5 g. monitor the minor's best interests throughout any
6 judicial proceeding, and

7 h. advise the court of his or her findings and
8 recommendations, if any, and the facts upon which they
9 are based.

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

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

20 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7505-3.2, as
21 amended by Section 2, Chapter 57, O.S.L. 2005 (10 O.S. Supp. 2008,
22 Section 7505-3.2), is amended to read as follows:

23 Section 7505-3.2 A. 1. An affidavit shall be attached to the
24 petition for adoption, or may be filed after the filing of the

1 petition for adoption, but prior to the final decree of adoption,
2 which discloses to the court all of the costs, funds, or monies
3 expended by the adoptive family or expected to be expended in
4 connection with the adoption of a minor.

5 2. No final decree of adoption shall be entered until the court
6 is satisfied that all costs and expenses have been disclosed, are
7 reasonable, and that the costs and expenses do not violate the
8 provisions of subsection B of this section. Upon its review of the
9 affidavit of monies expended, the court shall in writing disapprove
10 any expenditure that the court deems unreasonable or in violation of
11 Sections 865 through 869 of Title 21 of the Oklahoma Statutes and,
12 to the extent necessary to comply with Oklahoma law, shall order
13 reimbursement of any consideration given in violation of Sections
14 865 through 869 of Title 21 of the Oklahoma Statutes. Payments made
15 pursuant to this section shall not be a violation of Sections 865
16 through 869 of Title 21 of the Oklahoma Statutes.

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

- 21 a. reasonable attorney fees and court costs,
- 22 b. reasonable medical expenses for birth mother and minor
23 to be adopted,

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- 1 c. reasonable adoption counseling expenses for birth
2 parents before and after the birth of the minor, not
3 to exceed six (6) months from placement of the minor,
4 d. reasonable fees of a licensed child-placement agency,
5 e. reasonable living expenses for housing, food,
6 clothing, utilities, and other necessities of the
7 birth mother that are incurred during the adoption
8 planning process or during the pregnancy, not to
9 exceed two (2) months after the birth of the minor or
10 after the consent or relinquishment of the birth
11 mother,
12 f. reasonable costs for travel or transportation of the
13 birth mother or minor as same is incurred for medical
14 or adoption placement needs,
15 g. reasonable expenses for a home study, and
16 h. reasonable expenses legally required by any
17 governmental entity related to the adoption of a
18 minor.

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

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

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

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

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

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

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

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

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

19 5. The petition shall be heard by the court within ten (10)
20 days of filing. The court clerk shall charge the same cost for a
21 petition for payment of expenses as is charged for the filing of an
22 adoption petition. In the event an adoption petition is later filed
23 in the same county, the adoption petition shall be filed as an
24 amended petition within the same case in which payment for expenses

1 was approved and no additional court costs shall be required. In
2 the event a petition for preadoption termination of parental rights
3 is later filed in the same county, the court clerk shall not assess
4 an additional filing fee and may use the same case number as for the
5 petition for adoption.

6 6. Any order authorizing payment shall be attached to a
7 petition for adoption. If no adoption petition is filed, the court
8 shall retain jurisdiction to enter any orders deemed appropriate
9 regarding the reimbursement of costs and expenses paid. If the
10 child is placed for adoption outside the State of Oklahoma, any such
11 order shall be submitted to the Interstate Compact of the Placement
12 of Children and to the court in the other state where the petition
13 for adoption is to be filed.

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

22 a. retainer fees, the hourly rate, and the number of
23 hours billed for the adoption,
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- 1 b. any fee charged for preplacement or other home studies
2 of any prospective birth parents, regardless of
3 whether the home study was performed by an outside
4 agency,
- 5 c. any costs, fees or expenses or any other thing of
6 value paid to or on behalf of the birth parents
7 related to the adoption of a minor by any party other
8 than the adoptive parents, and
- 9 d. any other fees and expenses related to the adoption
10 not otherwise specifically listed in this section.

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

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

22 Section 866. A. 1. The crime of trafficking in children is
23 defined to consist of any of the following acts or any part thereof:
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1 a. the acceptance, solicitation, offer, payment or
2 transfer of any compensation, in money, property or
3 other thing of value, at any time, by any person in
4 connection with the acquisition or transfer of the
5 legal or physical custody or adoption of a minor
6 child, except as ordered by the court or except as
7 otherwise provided by Section 7505-3.2 of Title 10 of
8 the Oklahoma Statutes,

9 b. the acceptance or solicitation of any compensation, in
10 money, property or other thing of value, by any person
11 or organization for services performed, rendered or
12 purported to be performed to facilitate or assist in
13 the adoption or foster care placement of a minor
14 child, except by the Department of Human Services, a
15 child-placing agency licensed in Oklahoma pursuant to
16 the Oklahoma Child Care Facilities Licensing Act, or
17 an attorney authorized to practice law in Oklahoma.

18 The provisions of this paragraph shall not prohibit an
19 attorney licensed to practice law in another state or
20 an out-of-state licensed child-placing agency from
21 receiving compensation when working with an attorney
22 licensed in this state who is, or when working with a
23 child-placing agency licensed in this state which is,
24 providing adoption services or other services

1 necessary for placing a child in an adoptive
2 arrangement,

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

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

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

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

12 (2) the solicitation or receipt of any money or any
13 other thing of value by a birth parent, an
14 attorney or child-placing agency for expenses
15 related to the placement of a child for the
16 purpose of adoption from more than one
17 prospective adoptive family for the adoption of
18 one child. A birth parent, child-placing agency
19 or attorney shall not represent that a child is,
20 or will be, available for adoption to more than
21 one prospective adoptive family at one time,

22 g. advertising of services for compensation to assist
23 with or effect the placement of a child for adoption
24 or for care in a foster home by any person or

1 organization except by the Department of Human
2 Services, or a child-placing agency licensed in this
3 state. Nothing in this paragraph shall prohibit an
4 attorney authorized to practice law in Oklahoma from
5 the advertisement of legal services related to the
6 adoption of children, and

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

1 otherwise provided by Section 7505-3.2 of Title
2 10 of the Oklahoma Statutes.

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

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

12 b. Prospective adoptive parents who violate subparagraph
13 a of paragraph 1 of this subsection, upon conviction
14 thereof, shall be guilty of a misdemeanor and may be
15 punished by a fine not to exceed Five Thousand Dollars
16 (\$5,000.00) per violation.

17 B. 1. No person shall knowingly publish for circulation within
18 the borders of the State of Oklahoma an advertisement of any kind in
19 any print, broadcast or electronic medium, including, but not
20 limited to, newspapers, magazines, telephone directories, handbills,
21 radio or television, which violates subparagraph g or h of paragraph
22 1 of subsection A of this section.

23 2. Any person violating the provisions of this subsection
24 shall, upon conviction thereof, be guilty of a misdemeanor and shall

1 be punished by a fine not to exceed Five Thousand Dollars
2 (\$5,000.00) per violation.

3 C. The payment or acceptance of costs and expenses listed in
4 Section 7505-3.2 of Title 10 of the Oklahoma Statutes shall not be a
5 violation of this section as long as the petitioner or birth parent
6 has complied with the applicable procedure specified in Section
7 7505-3.2 of Title 10 of the Oklahoma Statutes and such costs and
8 expenses are approved by the court.

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

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

14 Passed the House of Representatives the 10th day of March, 2009.

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Presiding Officer of the House of
Representatives

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19 Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate

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