

ENROLLED HOUSE
BILL NO. 2174

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

and

Russell of the Senate

An Act relating to children; amending 10 O.S. 2001, Section 7502-1.2, which relates to adoption proceeding venues; making venue mandatory; expanding venue; amending 10 O.S. 2001, Section 7505-1.2, which relates to appointment of attorneys in adoption proceedings; authorizing appointment of certain attorney; amending 10 O.S. 2001, Section 7505-3.2, as amended by Section 2, Chapter 57, O.S.L. 2005 (10 O.S. Supp. 2008, Section 7505-3.2), which relates to certain required adoption-related disclosures; specifying where certain expense petitions shall be filed; requiring a Disclosure Statement of Adoption-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.

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

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:

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

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

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

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

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

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

3. The guardian ad litem shall be appointed to objectively advocate on behalf of the minor and act as an officer of the court to investigate all matters concerning the best interests of the minor. In addition to other duties required by the court and as

specified by the court, a guardian ad litem shall have the following responsibilities:

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

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

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

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

Section 7505-3.2 A. 1. An affidavit shall be attached to the petition for adoption, or may be filed after the filing of the petition for adoption, but prior to the final decree of adoption, which discloses to the court all of the costs, funds, or monies expended by the adoptive family or expected to be expended in connection with the adoption of a minor.

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

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

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

- f. reasonable costs for travel or transportation of the birth mother or minor as same is incurred for medical or adoption placement needs,
- g. reasonable expenses for a home study, and
- h. reasonable expenses legally required by any governmental entity related to the adoption of a minor.

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

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

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

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

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

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

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

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

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

5. The petition shall be heard by the court within ten (10) days of filing. The court clerk shall charge the same cost for a petition for payment of expenses as is charged for the filing of an adoption petition. In the event an adoption petition is later filed in the same county, the adoption petition shall be filed as an amended petition within the same case in which payment for expenses was approved and no additional court costs shall be required. In the event a petition for preadoption termination of parental rights is later filed in the same county, the court clerk shall not assess an additional filing fee and may use the same case number as for the petition for adoption.

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

E. 1. In addition to the adoptive family affidavit requirement of subsection A of this section, a Disclosure Statement of Adoption-related Costs and Expenditures shall be prepared in writing by the

attorney, child-placing agency, or person facilitating in a direct-placement adoption. The Disclosure Statement of Adoption-related Costs and Expenditures shall include a declaration of all fees, expenses, and costs charged or expected to be charged for the adoption including, but not limited to, the following:

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

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

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

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

- a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or except as

otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes,

- b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Department of Human Services, a child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing Act, or an attorney authorized to practice law in Oklahoma. The provisions of this paragraph shall not prohibit an attorney licensed to practice law in another state or an out-of-state licensed child-placing agency from receiving compensation when working with an attorney licensed in this state who is, or when working with a child-placing agency licensed in this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement,
- c. bringing or causing to be brought into this state or sending or causing to be sent outside this state any child for the purpose of placing such child in a foster home or for the adoption thereof and thereafter refusing to comply upon request with the Interstate Compact on the Placement of Children. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this state for the purpose of adopting the child into such person's own family,
- d. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption,
- e. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption,

- f. (1) the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent, child-placing agency or attorney who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$1,000.00) or more in total any money or any other thing of value without first disclosing to each prospective adoptive parent, child-placing agency, or and attorney the receipt of these expenses any money or any other thing of value immediately upon receipt,
- (2) the solicitation or receipt of any money or any other thing of value by a birth parent, an attorney or child-placing agency for expenses related to the placement of a child for the purpose of adoption from more than one prospective adoptive family for the adoption of one child. A birth parent, child-placing agency or attorney shall not represent that a child is, or will be, available for adoption to more than one prospective adoptive family at one time,
- g. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Human Services, or a child-placing agency licensed in this state. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Oklahoma from the advertisement of legal services related to the adoption of children, and
- h. (1) advertisements for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by a child-placing agency licensed in this state or an attorney authorized to practice law in Oklahoma. Nothing in this section shall prohibit a person from advertising to solicit a pregnant woman to consider adoptive placement with the person or to locate a child for an adoptive placement into the person's own home, provided that such person has received a favorable preplacement home study

recommendation in accordance with Section 7505-5.1 of Title 10 of the Oklahoma Statutes, which shall be verified by the signed written statement of the person or agency which performed the home study, and provided that no money or other thing of value is offered as part of such an inducement except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes.

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

2. a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a felony and shall be punishable by imprisonment of up to ten (10) years or a fine of up to Ten Thousand Dollars (\$10,000.00) per violation or both such fine and imprisonment.
- b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, shall be guilty of a misdemeanor and may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

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

2. Any person violating the provisions of this subsection shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

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

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

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

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

Presiding Officer of the House of
Representatives

Passed the Senate the 16th day of April, 2009.

Presiding Officer of the Senate