

ENROLLED HOUSE
BILL NO. 2733

By: Rousselot, Luttrell, Kern,
Johnson, Nelson, McAffrey
and Pittman of the House

and

Garrison and Johnson
(Constance) of the Senate

An Act relating to guardians and wards; amending 10 O.S. 2001, Section 7103, as renumbered by Section 212, Chapter 233, O.S.L. 2009, and as last amended by Section 10, Chapter 338, O.S.L. 2009 (10A O.S. Supp. 2009, Section 1-2-101), which relates to child abuse reporting requirements; providing exception; amending 30 O.S. 2001, Section 2-109, which relates to conditions of appointment for guardians; specifying requirements for certain custody determinations; requiring review of placement within one year; providing discretion to court to require certain periodic reviews; authorizing court to close certain guardianship cases; requiring the inclusion of certain conditions; establishing criteria for guardianships by abandonment in certain circumstances; defining term; specifying the rights of certain guardians; providing limitations of guardianship; specifying content of petition for custody by abandonment; requiring that certain petitions be notarized; specifying that notice is not required in certain circumstances; providing for filing fees; providing for the issuance of letters of custody by abandonment; specifying that custody by abandonment is effective upon taking of oath; prohibiting return of certain minors to parent or person having legal custody absent certain conditions; providing the procedure and requirements for determination of custody in certain circumstances; providing that certain children shall remain in the home of potential guardian throughout

proceedings; authorizing court to impose transition period for return of certain children to parents; providing grounds upon which custody by abandonment ceases; providing that certain abandonment circumstances shall not be reported to the Department of Human Services; amending 30 O.S. 2001, Section 4-404, which relates to costs in certain guardianship proceedings; establishing filing fee for guardianship by abandonment cases; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7103, as renumbered by Section 212, Chapter 233, O.S.L. 2009, and as last amended by Section 10, Chapter 338, O.S.L. 2009 (10A O.S. Supp. 2009, Section 1-2-101), is amended to read as follows:

Section 1-2-101. A. 1. The Department of Human Services shall establish a statewide centralized hotline for the reporting of child abuse or neglect to the Department.

2. The Department shall provide hotline-specific training including, but not limited to, interviewing skills, customer service skills, narrative writing, necessary computer systems, making case determinations, and identifying priority situations.

3. The Department is authorized to contract with third parties in order to train hotline workers.

4. The Department shall develop a system to track the number of calls received, and of that number:

- a. the number of calls screened out,
- b. the number of referrals assigned, and
- c. the number of calls in which the allegations were later found to be unsubstantiated or ruled out.

B. 1. Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall

report the matter promptly to the Department of Human Services. Reports shall be made to the hotline provided for in subsection A of this section. Any allegation of abuse or neglect reported in any manner to a county office shall immediately be referred to the hotline by the Department. Provided, however, that in actions for custody by abandonment, provided for in Section 3 of this act, there shall be no reporting requirement.

2. Every physician, surgeon, or other health care professional including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department.

3. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor, or administrator shall interfere with the reporting obligations of any employee or other person or in any manner discriminate or retaliate against the employee or other person who in good faith reports suspected child abuse or neglect, or who provides testimony in any proceeding involving child abuse or neglect. Any employer, supervisor, or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees.

5. Every physician, surgeon, or other health care professional making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide, upon request, copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

C. Any person who knowingly and willfully fails to promptly report suspected child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

2. If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

E. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection B of this section.

SECTION 2. AMENDATORY 30 O.S. 2001, Section 2-109, is amended to read as follows:

Section 2-109. A. When any person is appointed guardian of a minor, the court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the minor.

~~B. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible~~ An order providing for the transfer of the permanent care and custody of a child:

1. Shall require that the placement be reviewed within one (1) year after transfer and may require the person to whom custody is transferred to submit any records or reports the court deems necessary for purposes of the review;

2. May require periodic reviews by the court thereafter if the parties agree with the assent of the court that the reviews are not necessary to serve the best interests of the child;

3. Unless periodic reviews are required, may be closed by the court, provided the order transferring the permanent care and

custody of the child shall remain in full force and effect subject to the provisions of this section; and

4. Shall include conditions for the care, treatment, education and welfare of the child.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-117 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. The court of each county, when it appears necessary or convenient, may grant a qualified relative custody by abandonment of a minor or minors who have been abandoned, as defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes, in the care of the qualified relative if:

1. The minor is residing full-time with the qualified relative and the qualified relative contributes the major degree of support for the minor; and

2. The qualified relative is unable to contact the parent or parents or person or persons having legal custody of the minor, or the parent or parents or other person or persons having legal custody of the minor fails to or refuses to regain physical custody of the minor after a written request to do so by the qualified relative.

B. For purposes of this section, a "qualified relative" means an adult grandparent, great-grandparent, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew or a spouse of a qualified relative.

C. A qualified relative who is granted custody by abandonment shall have the same rights to arrange for, authorize, and consent to day care services, medical, psychological, dental, and educational assessment and services, and any other services that may be necessary to provide for the care, treatment, education, and welfare of the minor or minors that are given to legal guardians by the Oklahoma Guardianship and Conservatorship Act except that such relative may not consent to an adoption of the minor or minors. Custody by abandonment shall not grant a qualified relative the authority to receive, convey, or otherwise manage the income or assets of the minor or minors.

D. Custody by abandonment shall be made on the verified petition of a qualified relative and shall be substantially in the following form:

PETITION FOR CUSTODY BY ABANDONMENT

Comes Now the Petitioner, _____, and informs the Court as follows:

1. That I am now a resident in good faith of _____ County, and the State of Oklahoma for at least six (6) months prior to the filing of this petition.

2. That my home address is _____.

3. That my date of birth is _____.

4. That my Oklahoma driver license or other identification card number is _____.

5. That _____ is/are minor child(ren) _____ years of age, respectively, having the following dates of birth: _____.

6. That I am related to the child(ren) as his/her/their _____.

7. That the child(ren) has/have been living in my home since the _____ day of _____, 20____. Prior to this date, the child(ren) resided at the following address and in the following county and state: _____.

8. That the Court has jurisdiction in this action to make a child custody determination pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Sections 551-101 through 551-402 of Title 43 of the Oklahoma Statutes in that Oklahoma is the home state of the minor child(ren).

9. That the minor child(ren) is/are not Indian children within the meaning of the Federal or State Indian Child Welfare Acts.

10. That (check one)

() I am unable to contact or locate either parent of the child(ren) or other person(s) having legal custody of the child(ren) at this time.

() I made a written request to the child(ren)'s parent(s) or other person(s) having legal custody of the child(ren) on the ____ day of _____, 20____, to regain physical custody of the child(ren), and said custodian has failed to regain custody or such request has been refused.

11. That, at this time, I do/do not (choose one) intend to seek child support from the child(ren)'s parent(s) or legal guardian(s).

12. That granting Petitioner care and custody by abandonment is necessary to provide for the general welfare of the child(ren) and to allow Petitioner to authorize medical, dental, educational, child care and/or other services for the child(ren).

13. That I hereby accept care and custody of the child(ren). I will exercise continuing general supervision of the child(ren).

14. That I am qualified to be granted care and custody by abandonment. I further inform the Court that I am not a minor, incapacitated person or partially incapacitated person. I am not subject to registration under the Oklahoma Sex Offenders Registration Act, nor are any persons currently residing in my home. There are no conflicts of interest that would preclude or be substantially detrimental to my ability to act in the best interest(s) of the minor child(ren).

WHEREFORE, the Petitioner prays the Court to grant Petitioner care and custody by abandonment and issue Letters of Custody by Abandonment upon the taking of the oath.

Signature of Attorney or Pro Se Petitioner

Printed Name

Address

Verification

State of Oklahoma)

) SS.

County of _____)

I, _____, of lawful age, being first duly sworn upon oath deposes and states that I am the Petitioner named above; that I have read the foregoing Petition and understand its contents; that I hereby state that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge and belief.

Signature of Petitioner

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Number is:_____

My Commission Expires:_____

E. The provisions for receiving reports and investigations shall be identical to those provided for under subsection C of Section 2-101 of Title 30 of the Oklahoma Statutes. There shall be no notice requirements. A petition for custody by abandonment may be considered by the court ex parte.

F. The filing fees in matters pertaining to custody by abandonment shall not exceed the fees for matters pertaining to relative guardianship under Section 4-404 of Title 30 of the Oklahoma Statutes.

G. If after consideration, the court finds that granting custody by abandonment to a qualified relative is in the best interest of the child, the court shall issue an order granting said relative custody by abandonment. A qualified relative who is granted custody by abandonment shall be issued Letters of Custody by Abandonment. Custody by abandonment shall take effect upon taking of an oath by the qualified relative.

H. 1. A minor who is in the permanent care of the qualified relative granted care and custody by abandonment and who is either:

- a. twenty-four (24) months of age or less and who has been abandoned for at least six (6) months in the physical care of the qualified relative, or
- b. over twenty-four (24) months of age and who has been abandoned for a period of twelve (12) months out of the last fourteen (14) months in the physical care of the qualified relative,

may not be reclaimed or recovered to the parent or parents or other person or persons having legal custody of the minor who abandoned the minor except through order of a court of competent jurisdiction or by voluntary release of the minor by the qualified relative.

2. Upon any action to determine the custody of the minor pursuant to the provisions of this subsection, the court shall base its findings and determination of custody on the best interests of the minor and:

- a. the duration of the abandonment and integration of the minor into the home of the relative,
- b. the preference of the minor if the minor is determined to be of sufficient maturity to express a preference,
- c. the mental and physical health of the minor, and
- d. such other factors as are deemed necessary in the particular circumstances.

3. During the pendency of any action to determine the custody of a minor pursuant to this subsection, unless it is determined not to be in the best interests of the minor, the minor shall remain in the custody of the qualified relative who has accepted custody by abandonment.

4. If the court orders the minor be returned to the minor's parent or parents or other legal guardian, the court may provide for a transitional period for the return in the best interest of the minor.

I. The provisions of this section shall not apply to the acceptance of care and custody by one parent of the minor from the other parent of the minor.

J. 1. Custody by abandonment for a minor ceases upon:

- a. the minor attaining majority, or attaining the age of nineteen (19) years if the minor is a full-time student in high school,
- b. the solemnized marriage of the minor,
- c. the voluntary relinquishment by the qualified relative granted custody by abandonment, or
- d. by order of the court.

2. If the minor stops residing with the relative, or if custody by abandonment has been terminated for any reason, the relative shall notify the court issuing the Letters of Custody by Abandonment and any school, health care provider, health care service plan, or other provider that has been given a copy of the Letters of Custody by Abandonment.

K. Actions establishing abandonment pursuant to this section shall not be required to be reported to the Department of Human Services under subsection B of Section 1-2-101 of Title 10A of the Oklahoma Statutes.

SECTION 4. AMENDATORY 30 O.S. 2001, Section 4-404, is amended to read as follows:

Section 4-404. A. No costs shall be required by the court clerk in any guardianship proceeding where the proceeding is for the purpose of appointing a guardian to approve or authorize the ward to enter the armed forces of the United States.

B. If the court waives the report, the court may waive the fee for the filing of the annual guardianship report required by Section 152 of Title 28 of the Oklahoma Statutes, for a guardian or limited guardian of the person of an incapacitated or partially incapacitated person or for a guardian of the person of a minor.

C. The clerk of the district court in which an application for a relative guardianship, defined as an application for the care and custody of a child to be transferred to an adult relative of the child within the third degree of consanguinity, is filed shall collect as court costs a fee of Fifty Dollars (\$50.00).

D. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which the guardian and the sureties on the guardian's bond are responsible.

SECTION 5. This act shall become effective November 1, 2010.

Passed the House of Representatives the 15th day of February,
2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 6th day of April, 2010.

Presiding Officer of the Senate