

ENROLLED SENATE
BILL NO. 1029

By: Russell, Corn, Paddack,
Sykes, and Jolley of the
Senate

and

Nelson, Cooksey, Kern and
Rousselot of the House

An Act relating to adoption; providing for an adoption full-disclosure statement; specifying contents of statement; requiring the statement be provided to birth parents and adoptive parents; requiring signature acknowledging understanding of statement; providing for the attachment of the statement to certain adoption pleadings; providing that certain information shall be attached as an addendum; amending 10 O.S. 2001, Sections 7505-3.2, as last amended by Section 3 of Enrolled House Bill No. 2174 of the 1st Session of the 52nd Oklahoma Legislature, and 7505-5.1, as amended by Section 7, Chapter 196, O.S.L. 2007 (10 O.S. Supp. 2008, Section 7505-5.1), which relate costs to adoptive families and home studies; modifying persons required to prepare certain statement; removing certain waiver; modifying when home placement study is not required; amending Section 1, Chapter 44, O.S.L. 2008, which relates to the Adoption Review Task Force; modifying task force membership; providing for appointment of additional members; modifying deadline for certain reports; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7503-1.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A written adoption full-disclosure statement shall be prepared by the attorneys of record for the petitioner and birth parents in a direct-placement adoption of a minor in this state. Each statement shall include:

1. The name and address of the attorney;
2. A copy of Sections 865 through 869 of Title 21 of the Oklahoma Statutes relating to child trafficking;
3. A copy of Section 7505-3.2 of Title 10 of the Oklahoma Statutes relating to allowable adoption-related costs and expenses;
4. The scope of services provided by the attorney to, or discussed by the attorney with, the client or clients of the attorney including, but not limited to, services, if rendered, that aid in:
 - a. coping with the particular behaviors and developmental history of the child,
 - b. understanding the psychological needs of the child that are related to the racial, ethnic, or cultural background of the child,
 - c. explaining how to help the child understand adoption,
 - d. understanding the perspective of the birth parent,
 - e. coping with the loss of the child by the birth parent,
 - f. understanding search and reunion issues,
 - g. information addressing open and closed adoptions, and
 - h. search and reunion resources;

5. A procedure for grievances; provided, that this may be a reference to a Bar Association service for addressing fee disputes or ethics complaints;

6. The manner by which the attorney charges fees for legal services for an adoption, the refund policy, if any, and other expected or anticipated related fees and expenses of the adoption;

7. A statement that customary risks associated with adoptions involve:

- a. birth parents who choose not to relinquish parental rights or not to consent to the adoption,
- b. birth parents who seek to withdraw a consent to adoption or oppose the adoption for other reasons,
- c. uncertainty or inaccurate information regarding paternity,
- d. the prenatal care or actions of the birth mother or care or health of the child, and
- e. discovery of the applicability of the federal and Oklahoma Indian Child Welfare Acts;

8. A provision informing persons that coercion of birth parents is prohibited;

9. A statement that an attorney in this state shall not represent both a relinquishing or consenting parent and a prospective adoptive parent, except in a stepparent adoption;

10. A copy of Section 7505-6.2 of Title 10 of the Oklahoma Statutes, specifying the statutory list of items required to be filed before the final hearing in an adoption;

11. The anticipated time frame for prosecuting a typical uncontested adoption; and

12. Copies of the federal and Oklahoma Indian Child Welfare Acts, found at 25 U.S.C., Sections 1901 through 1923 and Sections 40 through 40.9 of Title 10 of the Oklahoma Statutes, respectively.

B. Every adoptive parent and birth parent represented by legal counsel in a direct-placement adoption of a minor in this state shall:

1. Be provided by their respective attorneys an adoption full-disclosure statement as provided for in subsection A of this section; and

2. Read and sign the adoption full-disclosure statement acknowledging that they have read and understand the statement.

C. The adoption full-disclosure statement signed by the petitioner or petitioners shall be attached to the petition for adoption filed with the court in each direct-placement adoption of a minor in this state. As to birth parents, the signed adoption full-disclosure statement shall be attached to the first entry of appearance or pleading filed by counsel for said party. The information disclosed in paragraph 6 of subsection A of this section shall also be separately stated and attached as an addendum to the adoption full-disclosure statement and the addendum shall not disclose the caption of the proceeding, the identities of the parties or attorney or any other information identifying the parties or proceeding.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-3.2, as last amended by Section 3 of Enrolled House Bill No. 2174 of the 1st Session of the 52nd Oklahoma Legislature, 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 shall be filed in the district court 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 person, attorney, or 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 person, attorney, or 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 3. AMENDATORY 10 O.S. 2001, Section 7505-5.1, as amended by Section 7, Chapter 196, O.S.L. 2007 (10 O.S. Supp. 2008, Section 7505-5.1), is amended to read as follows:

Section 7505-5.1 A. Except as otherwise provided in this section, only a person for whom a favorable written preplacement home study has been prepared may accept custody of a minor for purposes of adoption. A preplacement home study is favorable if it contains a finding that the person is suited to be an adoptive parent, either in general or for a particular minor, and it is completed or brought current within twelve (12) months next preceding a placement of a minor with the person for adoption.

~~B. A court may waive the requirement of a preplacement home study for good cause shown, but a person who is the subject of a waiver must be evaluated during the pendency of a proceeding for adoption.~~

~~C. A preplacement home study is not required if a parent or guardian places a minor directly with a relative of the minor for purposes of adoption, or if the minor has been residing with a birth parent's spouse for not less than one (1) year as of the date the petition for adoption is filed, but a home study of the relative or stepparent is required during the pendency of a proceeding for adoption.~~

~~D. C. A prospective adoptive parent shall not be approved for placement of a child if the petitioners or any other person residing in the home of the petitioners has been convicted of any of the following felony offenses:~~

1. Within the five-year period preceding the date of the petition, physical assault, domestic abuse, battery or a drug-related offense;

2. Child abuse or neglect;

3. A crime against a child, including, but not limited to, child pornography; and

4. A crime involving violence, including, but not limited to, rape, sexual assault or homicide, but excluding those crimes specified in paragraph 1 of this subsection.

~~E. D. Under no circumstances shall a child be placed in the custody of an individual subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act.~~

SECTION 4. AMENDATORY Section 1, Chapter 44, O.S.L. 2008, is amended to read as follows:

Section 1. A. There is hereby created, to continue until December 31, 2009, the "Adoption Review Task Force".

B. The Task Force shall consist of ~~thirteen (13)~~ sixteen (16) members:

1. ~~Four~~ Five members shall be appointed by the Governor as follows:

- a. one member shall be a presiding judge of a court having adoption law jurisdiction from a rural county,
- b. one member shall be a presiding judge of a court having adoption law jurisdiction from an urban county,
- c. one member shall be a law professor from one of the law schools in this state, ~~and~~
- d. one member shall have specialized knowledge of information systems and technology, and
- e. one member who shall have been adopted as a minor child in this state and who is currently at least twenty-one (21) years of age;

2. ~~Four~~ Five members shall be appointed by the Speaker of the Oklahoma House of Representatives as follows:

- a. one member shall be a licensed mental health professional with specialized knowledge of adoption issues, foster care, and social work,
- b. one member shall be from an adoption advocacy group,
- c. one member shall be an attorney practicing in the area of adoption law who is an active member of the Family Law Section of the Oklahoma Bar Association, ~~and~~
- d. one member shall be from the Oklahoma House of Representatives, and

- e. one member shall be an adoptive parent who adopted a child through a domestic adoption in this state;

3. ~~Four~~ Five members shall be appointed by the President Pro Tempore of the Senate as follows:

- a. two members shall be directors of licensed child-placing agencies,
- b. one member shall be a public defender, ~~and~~
- c. one member shall be from the Senate~~, and~~
- d. one member shall be a birth mother who placed a minor child for adoption in this state; and

4. The Director of the Department of Human Services, or a designee.

C. The appointed member from the Oklahoma House of Representatives and the appointed member from the State Senate shall serve as cochairs of the Task Force. The cochairs shall convene the first meeting of the Task Force. The members of the Task Force shall elect any other officers during the first meeting and upon a vacancy in any office. Vacancies of members on the Task Force shall be filled by the original appointing authority. The Task Force shall meet as often as necessary.

D. ~~Appointments~~ Additional appointments to the Task Force shall be made ~~by September 1, 2008~~ as soon as possible upon enactment of this section.

E. A majority of the members of the Task Force shall constitute a quorum. A majority of the members present at a meeting may act for the Task Force.

F. Nonlegislative members of the Task Force shall be reimbursed by their respective agencies for necessary travel expenses incurred in the performance of duties pursuant to the provisions of the State Travel Reimbursement Act. Legislative members of the Task Force shall be reimbursed for necessary travel expenses incurred in the

performance of duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes.

G. Administrative support for the Task Force including, but not limited to, personnel necessary to ensure the proper performance of the duties and responsibilities of the Task Force shall be provided by the Department of Human Services to be supplemented, if necessary, by the state agencies involved in the Task Force, and the staff of the Oklahoma House of Representatives and the Senate. All participating state agencies shall provide for any administrative support requested by the Task Force.

H. The Task Force shall study and make recommendations concerning the laws and practices relating to adoption. The Task Force shall review and make recommendations regarding:

1. Allowable expenses paid by adoptive parents for the benefit of the birth parents;

2. Documentation evidencing a detailed accounting and full disclosure of all monies expended for adoptions including, but not limited to:

- a. birth mother expenses,
- b. agency fees,
- c. social services fees, and
- d. attorney fees;

3. Procedures concerning the approval of expenses including, but not limited to:

- a. a mandatory hearing for uncommon expenses paid, and
- b. a time limit for the approval of expenses;

4. The potential role of public defenders in adoption proceedings;

5. Procedures to ensure accuracy in the assessment of whether a child has Native American blood;

6. Information that should be required to be given to all parties involved in the adoption;

7. The standardization of the reporting of the number of adoptions finalized in Oklahoma;

8. Jurisdictional issues with respect to adoptions;

9. The use of technology to aid in the facilitation of adoptions;

10. The appointment of an advocate for the birth mother;

11. Confidentiality considerations; ~~and~~

12. Industry advertising practices; and

13. Any other matter of law related to the adoption of minors as determined by the Task Force to warrant review and recommendation.

I. ~~The Task Force shall publish an initial report of findings and recommendations by December 31, 2008, and a final report by December 31, 2009~~ no later than December 31, 2010, including recommendations for any resulting legislation.

SECTION 5. Sections 1, 2 and 3 of this act shall become effective November 1, 2009.

SECTION 6. Section 4 of this act shall become effective July 1, 2009.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 13th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of May, 2009.

Presiding Officer of the House
of Representatives