

THE HOUSE OF REPRESENTATIVES
Thursday, February 19, 2009

Committee Substitute for
House Bill No. 2174

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2174 - By: NELSON, MCAFFREY,
ROUSSELOT, SHERRER AND KERN 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:

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

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

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

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

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

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

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

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

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

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

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

21 4. The guardian ad litem shall be given access to the court file and access to all
22 records and reports relevant to the case and to any records and reports of examination of

1 the minor's parent or other custodian, as specified by the court, subject to such protective
2 orders regarding identifying information as the court deems advisable.

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

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

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

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

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

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

20 2. In addition, all expenses approved by the court should be commensurate with
21 other customary fees for similar services by persons of equivalent experience and
22 training where the services are performed. Any services provided outside this state shall

1 be allowed in an amount as if the services had been performed within the State of
2 Oklahoma.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 13 a. the acceptance, solicitation, offer, payment or transfer of any
14 compensation, in money, property or other thing of value, at any time,
15 by any person in connection with the acquisition or transfer of the legal
16 or physical custody or adoption of a minor child, except as ordered by
17 the court or except as otherwise provided by Section 7505-3.2 of Title
18 10 of the Oklahoma Statutes,
19 b. the acceptance or solicitation of any compensation, in money, property
20 or other thing of value, by any person or organization for services
21 performed, rendered or purported to be performed to facilitate or assist
22 in the adoption or foster care placement of a minor child, except by the

1 Department of Human Services, a child-placing agency licensed in
2 Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing
3 Act, or an attorney authorized to practice law in Oklahoma. The
4 provisions of this paragraph shall not prohibit an attorney licensed to
5 practice law in another state or an out-of-state licensed child-placing
6 agency from receiving compensation when working with an attorney
7 licensed in this state who is, or when working with a child-placing
8 agency licensed in this state which is, providing adoption services or
9 other services necessary for placing a child in an adoptive
10 arrangement,

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

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

- 1 e. the solicitation or receipt of any money or any other thing of value for
2 expenses related to the placement of a child for adoption by a woman
3 who knows she is not pregnant but who holds herself out to be
4 pregnant and offers to place a child upon birth for adoption,
- 5 f. (1) the receipt of any money or any other thing of value for expenses
6 related to the placement of a child for adoption by a birth
7 parent, child-placing agency or attorney who receives, from one
8 or more parties, ~~an aggregate amount of One Thousand Dollars~~
9 ~~(\$1,000.00) or more in total~~ any money or any other thing of
10 value without first disclosing to each prospective adoptive
11 parent, child-placing agency, or and attorney the receipt of these
12 ~~expenses~~ any money or any other thing of value immediately
13 upon receipt.
- 14 (2) the solicitation or receipt of any money or any other thing of
15 value by a birth parent, an attorney or child-placing agency for
16 expenses related to the placement of a child for the purpose of
17 adoption from more than one prospective adoptive family for the
18 adoption of one child. A birth parent, child-placing agency or
19 attorney shall not represent that a child is, or will be, available
20 for adoption to more than one prospective adoptive family at one
21 time,

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

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

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

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

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

10 b. Prospective adoptive parents who violate subparagraph a of paragraph
11 1 of this subsection, upon conviction thereof, shall be guilty of a
12 misdemeanor and may be punished by a fine not to exceed Five
13 Thousand Dollars (\$5,000.00) per violation.

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

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

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

6 D. Any person knowingly failing to file an affidavit of all adoption costs and
7 expenses before the final decree of adoption as required by Sections 7505-3.2 and 7505-
8 6.2 of Title 10 of the Oklahoma Statutes shall be guilty of a misdemeanor.

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

10 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02-18-09 -
11 DO PASS, As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.