

EHB 2174

THE STATE SENATE  
Monday, April 6, 2009

ENGROSSED

House Bill No. 2174

As Amended

ENGROSSED HOUSE BILL NO. 2174 - By: Nelson, McAffrey, Rousselot, Sherrer, Kern, Peterson and Cooksey of the House and Russell of the Senate.

[ children - adoption proceeding venues - attorney - Disclosure Statement of Adoption-related Costs and Expenditures - child trafficking - 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.

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

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

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

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

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

22          3. The guardian ad litem shall be appointed to objectively  
23 advocate on behalf of the minor and act as an officer of the court

1 to investigate all matters concerning the best interests of the  
2 minor. In addition to other duties required by the court and as  
3 specified by the court, a guardian ad litem shall have the following  
4 responsibilities:

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

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

1 to any records and reports of examination of the minor's parent or  
2 other custodian, as specified by the court, subject to such  
3 protective orders regarding identifying information as the court  
4 deems advisable.

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

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

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

18 2. No final decree of adoption shall be entered until the court  
19 is satisfied that all costs and expenses have been disclosed, are  
20 reasonable, and that the costs and expenses do not violate the  
21 provisions of subsection B of this section. Upon its review of the  
22 affidavit of monies expended, the court shall in writing disapprove  
23 any expenditure that the court deems unreasonable or in violation of

1 Sections 865 through 869 of Title 21 of the Oklahoma Statutes and,  
2 to the extent necessary to comply with Oklahoma law, shall order  
3 reimbursement of any consideration given in violation of Sections  
4 865 through 869 of Title 21 of the Oklahoma Statutes. Payments made  
5 pursuant to this section shall not be a violation of Sections 865  
6 through 869 of Title 21 of the Oklahoma Statutes.

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

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

- 1                   after the consent or relinquishment of the birth  
2                   mother,
- 3           f.   reasonable costs for travel or transportation of the  
4                   birth mother or minor as same is incurred for medical  
5                   or adoption placement needs,
- 6           g.   reasonable expenses for a home study, and
- 7           h.   reasonable expenses legally required by any  
8                   governmental entity related to the adoption of a  
9                   minor.

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

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

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

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

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

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

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

21          3. The petition for an order approving payment of adoption-  
22 related expenses ~~may~~ shall be filed in the district court where the  
23 ~~birth mother resides, in the county where the petitioner, attorney,~~

1 ~~or child placing agency is located, or in the county where the~~  
2 adoption petition is to be filed, as provided in Section 7502-1.2 of  
3 this title.

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

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

22 6. Any order authorizing payment shall be attached to a  
23 petition for adoption. If no adoption petition is filed, the court

1 shall retain jurisdiction to enter any orders deemed appropriate  
2 regarding the reimbursement of costs and expenses paid. If the  
3 child is placed for adoption outside the State of Oklahoma, any such  
4 order shall be submitted to the Interstate Compact of the Placement  
5 of Children and to the court in the other state where the petition  
6 for adoption is to be filed.

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

- 15 a. retainer fees, the hourly rate, and the number of  
16 hours billed for the adoption,  
17 b. any fee charged for preplacement or other home studies  
18 of any prospective birth parents, regardless of  
19 whether the home study was performed by an outside  
20 agency,  
21 c. any costs, fees or expenses or any other thing of  
22 value paid to or on behalf of the birth parents

1                   related to the adoption of a minor by any party other  
2                   than the adoptive parents, and  
3           d.   any other fees and expenses related to the adoption  
4                   not otherwise specifically listed in this section.

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

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

16           Section 866. A. 1. The crime of trafficking in children is  
17   defined to consist of any of the following acts or any part thereof:  
18           a.   the acceptance, solicitation, offer, payment or  
19               transfer of any compensation, in money, property or  
20               other thing of value, at any time, by any person in  
21               connection with the acquisition or transfer of the  
22               legal or physical custody or adoption of a minor  
23               child, except as ordered by the court or except as

1 otherwise provided by Section 7505-3.2 of Title 10 of  
2 the Oklahoma Statutes,  
3 b. the acceptance or solicitation of any compensation, in  
4 money, property or other thing of value, by any person  
5 or organization for services performed, rendered or  
6 purported to be performed to facilitate or assist in  
7 the adoption or foster care placement of a minor  
8 child, except by the Department of Human Services, a  
9 child-placing agency licensed in Oklahoma pursuant to  
10 the Oklahoma Child Care Facilities Licensing Act, or  
11 an attorney authorized to practice law in Oklahoma.  
12 The provisions of this paragraph shall not prohibit an  
13 attorney licensed to practice law in another state or  
14 an out-of-state licensed child-placing agency from  
15 receiving compensation when working with an attorney  
16 licensed in this state who is, or when working with a  
17 child-placing agency licensed in this state which is,  
18 providing adoption services or other services  
19 necessary for placing a child in an adoptive  
20 arrangement,  
21 c. bringing or causing to be brought into this state or  
22 sending or causing to be sent outside this state any  
23 child for the purpose of placing such child in a

1 foster home or for the adoption thereof and thereafter  
2 refusing to comply upon request with the Interstate  
3 Compact on the Placement of Children. Provided,  
4 however, that this provision shall have no application  
5 to the parent or guardian of the child nor to a person  
6 bringing said child into this state for the purpose of  
7 adopting the child into such person's own family,  
8 d. the solicitation or receipt of any money or any other  
9 thing of value for expenses related to the placement  
10 of a child for the purpose of an adoption by the birth  
11 parent of the child who at the time of the  
12 solicitation or receipt had no intent to consent to  
13 eventual adoption,  
14 e. the solicitation or receipt of any money or any other  
15 thing of value for expenses related to the placement  
16 of a child for adoption by a woman who knows she is  
17 not pregnant but who holds herself out to be pregnant  
18 and offers to place a child upon birth for adoption,  
19 f. (1) the receipt of any money or any other thing of  
20 value for expenses related to the placement of a  
21 child for adoption by a birth parent, child-  
22 placing agency or attorney who receives, from one  
23 or more parties, ~~an aggregate amount of One~~

1 ~~Thousand Dollars (\$1,000.00) or more in total~~ any  
2 money or any other thing of value without first  
3 disclosing to each prospective adoptive parent,  
4 child-placing agency, ~~or~~ and attorney the receipt  
5 of ~~these expenses~~ any money or any other thing of  
6 value immediately upon receipt,

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

17 g. advertising of services for compensation to assist  
18 with or effect the placement of a child for adoption  
19 or for care in a foster home by any person or  
20 organization except by the Department of Human  
21 Services, or a child-placing agency licensed in this  
22 state. Nothing in this paragraph shall prohibit an  
23 attorney authorized to practice law in Oklahoma from

1 the advertisement of legal services related to the  
2 adoption of children, and

3 h. (1) advertisements for and solicitation of a woman  
4 who is pregnant to induce her to place her child  
5 upon birth for adoption, except by a child-  
6 placing agency licensed in this state or an  
7 attorney authorized to practice law in Oklahoma.  
8 Nothing in this section shall prohibit a person  
9 from advertising to solicit a pregnant woman to  
10 consider adoptive placement with the person or to  
11 locate a child for an adoptive placement into the  
12 person's own home, provided that such person has  
13 received a favorable preplacement home study  
14 recommendation in accordance with Section 7505-  
15 5.1 of Title 10 of the Oklahoma Statutes, which  
16 shall be verified by the signed written statement  
17 of the person or agency which performed the home  
18 study, and provided that no money or other thing  
19 of value is offered as part of such an inducement  
20 except as ordered by the court or except as  
21 otherwise provided by Section 7505-3.2 of Title  
22 10 of the Oklahoma Statutes.

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

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

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

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

21 2. Any person violating the provisions of this subsection  
22 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 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO  
15 PASS, As Amended and Coauthored.