

1 ENGROSSED HOUSE
2 BILL NO. 2287

By: Virgin and Derby of the
House

3 and

4 Sparks of the Senate
5
6

7 An Act relating to notice by publication; amending 10
8 O.S. 2011, Section 7505-4.1, which relates to
9 adoption without the consent of a parent;
10 establishing due diligence notice requirements;
11 amending 43 O.S. 2011, Section 105, which relates to
12 petition and summons requirements for dissolution of
13 marriage petitions; establishing due diligence
14 requirements for notice by publication; and providing
15 an effective date.

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

15 SECTION 1. AMENDATORY 10 O.S. 2011, Section 7505-4.1, is
16 amended to read as follows:

17 Section 7505-4.1 A. If a consent to adoption or permanent
18 relinquishment for adoption has not been obtained from both parents
19 of a minor who is the subject of a petition for adoption, and the
20 rights of the nonconsenting parent or parents have not previously
21 been terminated, the petitioner for adoption, a consenting parent,
22 or a legal guardian or legal custodian of the minor to be adopted
23 must file an application to the court stating the reason that the
24 consent or relinquishment of the parent or parents is not necessary.

1 In the alternative, if the nonconsenting parent is a putative father
2 of a minor born out of wedlock, the petitioner for adoption, a
3 consenting parent, or a legal guardian or legal custodian of the
4 minor may file an application to terminate the parental rights of
5 the putative father. The grounds for terminating a putative father
6 pursuant to this section shall be identical to the grounds for
7 permitting an adoption without the consent of a parent, pursuant to
8 Section 7505-4.2 of this title.

9 B. A hearing on an application for adoption without consent or
10 an application to terminate parental rights cannot be combined with
11 the hearing on the application for a final decree of adoption. For
12 good cause shown, a hearing on the application for a final decree of
13 adoption may be heard as early as the same day as a hearing on an
14 application to terminate parental rights, without prejudice to the
15 rights of any parties to appeal from the order terminating parental
16 rights.

17 C. 1. Prior to the hearing on the application to permit the
18 adoption of the minor without the consent or relinquishment of a
19 parent, or the application to terminate the rights of a putative
20 father filed pursuant to this section, notice of the hearing on the
21 application and a copy of the application shall be served upon the
22 parent or putative father who is the subject of the application in
23 the same manner as summons is served in civil cases, not less than
24 fifteen (15) days prior to the hearing.

1 2. The notice shall contain the name of the parent, putative
2 father, or if the father is unknown, the name of the child, date of
3 birth of the child, the date of the hearing, and the ground or
4 grounds for which application for adoption without consent or
5 relinquishment or termination of parental rights is sought. The
6 notice shall apprise the parent or putative father of the parent's
7 legal rights and shall include a clear statement that failure to
8 appear at the hearing shall constitute a denial of interest in the
9 child, which denial may result, without further notice of this
10 proceeding or any subsequent proceeding, in the granting of the
11 application for adoption without consent or permanent relinquishment
12 or in the termination of the putative father's parental rights and
13 in the child's adoption.

14 3. If the identity or whereabouts of a parent or putative
15 father are unknown, the court ~~must~~ shall determine whether the
16 parent or putative father can be identified or located. If the
17 identity of a parent is established, but the whereabouts of the
18 parent are unknown, the petitioner for adoption shall provide an
19 affidavit verifying the efforts made by petitioner to locate the
20 parent as provided by subsection D of this section. Following an
21 inquiry pursuant to Section 7505-4.3 of this title, if the court
22 finds that the identity ~~or whereabouts~~ of the putative father cannot
23 be ascertained, and this fact is attested to by affidavit of the
24 consenting parent, legal guardian or legal custodian of the minor,

1 it shall order that notice be given by publication ~~and, if the~~
2 ~~identity is known, that a copy be mailed to the last-known address~~
3 ~~of the parent or putative father.~~ The notice shall be published
4 once pursuant to the laws relating to the service of notice by
5 publication in the county in which the petition to adopt is filed,
6 and the hearing shall not be held for at least fifteen (15) days
7 after publication of the notice. When notice is given by
8 publication, an order terminating parental rights shall not become
9 final for a period of fifteen (15) days from the date of the order.

10 4. A parent or putative father may waive such person's right to
11 notice pursuant to this section. The waiver, signed by the parent
12 or putative father, shall include a statement affirming that the
13 person signing the waiver understands that the waiver shall
14 constitute grounds for ordering adoption without consent of the
15 parent or for the termination of the parental rights of a putative
16 father pursuant to the provisions of this section and Section 7505-
17 4.2 of this title. A putative father may waive his right to notice
18 under this section, by signing an extrajudicial consent pursuant to
19 Section 7503-2.6 of this title, or by waiving notice on a form filed
20 with the Paternity Registry of the Department of Human Services, or
21 by failing to register with the Paternity Registry of the Department
22 of Human Services after receiving a Notice of Plan for Adoption
23 pursuant to Section 7503-3.1 of this title.

1 D. If the whereabouts of a parent are not known, an adoption
2 petitioner shall establish that service cannot be made in any other
3 manner than notice by publication and that due diligent efforts have
4 been made by filing with the court an affidavit. The actions listed
5 in paragraphs 1 through 10 of this subsection shall be included on
6 each affidavit. The adoption petitioner shall file with the court
7 which action or actions listed in paragraphs 1 through 10 have been
8 taken by the petitioner on the affidavit:

9 1. Verifying that the adoption petitioner has attempted to
10 serve the parent at the last-known address of the parent by
11 certified mail, restricted delivery, return receipt requested;

12 2. Verifying that the adoption petitioner has attempted to
13 contact or question the friends and family of the parent as well as
14 any employers known to the adoption petitioner;

15 3. Verifying that the adoption petitioner has checked telephone
16 directories of the area of the last-known residence of the parent;

17 4. Verifying that the adoption petitioner has used a locate and
18 research company or private investigator to find the parent;

19 5. Verifying that the adoption petitioner has searched for the
20 parent using people-finder services on the Internet, and by
21 searching Internet social networks, such as Facebook;

22 6. Verifying that the adoption petitioner has contacted utility
23 companies or service providers in the area of the last-known
24 residence of the parent;

1 7. Verifying that the adoption petitioner has searched property
2 tax listings in the area of the last-known residence of the parent;

3 8. Verifying that the adoption petitioner has searched the
4 Oklahoma State Courts Network, or has requested relevant information
5 from the court clerk of the county of the last-known residence of
6 the parent for any court cases involving the parent;

7 9. Verifying that the adoption petitioner has searched court
8 records outside of the state in any jurisdiction there is reason to
9 believe the parent may reside; and

10 10. Verifying any other attempts or searches the adoption
11 petitioner may have made.

12 E. When a parent or putative father appears at the hearing and
13 desires counsel but is indigent and cannot for that reason employ
14 counsel, the court shall appoint counsel. In all counties having
15 county indigent defenders, the county's indigent defenders shall
16 assume the duties of representation in such proceedings.

17 ~~E.~~ F. At the hearing on an application to permit adoption
18 without the consent or relinquishment of a parent, the court may
19 determine whether the minor is eligible for adoption pursuant to
20 Section 7505-4.2 of this title. At the hearing on an application to
21 terminate the parental rights of a putative father, the court may,
22 if it is in the best interests of the minor, determine that the
23 consent of the putative father to the adoption of the minor is not
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1 required, and terminate any parental rights which the putative
2 father may have, as provided in Section 7505-4.2 of this title.

3 ~~F.~~ G. The court shall terminate the parental rights of a
4 putative father if he fails to appear at the hearing on the
5 application to terminate his parental rights or if he has waived
6 notice pursuant to paragraph 4 of subsection C of this section.

7 ~~G.~~ H. A proceeding pursuant to this section for determination
8 of necessity of parental consent or for termination of parental
9 rights shall be heard by the court without a jury.

10 ~~H.~~ I. No order of the court shall be vacated, set aside, or
11 annulled upon the application of any person who was properly served
12 with notice in accordance with this section but failed to appear,
13 unless the applicant has established by clear and convincing
14 evidence that such failure to appear was due to unavoidable
15 circumstances. Such application must be filed within ten (10) days
16 of the date of the hearing at which the applicant failed to appear.
17 No order of the court shall be vacated, set aside or annulled upon
18 the application of any person who waived notice pursuant to
19 paragraph 4 of subsection C of this section.

20 ~~I.~~ J.

21 1. a. An appeal may be taken from any final order, judgment,
22 or decree terminating parental rights rendered
23 pursuant to this section to the Supreme Court by any
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1 person aggrieved thereby, in the manner provided for
2 appeals from the court as provided in this subsection.

3 b. An appeal from an order determining a child eligible
4 for adoption which does not terminate parental rights
5 may be taken in the same manner provided for appeals
6 from the court as provided in this subsection. The
7 failure of a parent to appeal from an order declaring
8 a child eligible for adoption without consent of the
9 parent which does not terminate parental rights shall
10 not preclude such parent from asserting error in the
11 order after the final decree is rendered.

12 2. In an appeal concerning the termination of parental rights
13 for purposes of adoption pursuant to this section or from an order
14 determining a child eligible for adoption which does not terminate
15 parental rights pursuant to this section, the appellant's
16 designation of record shall be filed in the trial court within ten
17 (10) days after the date of the judgment or order. Appellee's
18 counter designation of record shall be filed in the trial court ten
19 (10) days after appellant's designation of record is filed in the
20 trial court.

21 3. All appeals of cases concerning the termination of parental
22 rights for purposes of adoption or an order determining a child
23 eligible for adoption which does not terminate parental rights
24 pursuant to this section shall be initiated by filing a petition in

1 error in the Supreme Court within thirty (30) days of the filing of
2 the order, judgment, or decree appealed from. The record on appeal
3 shall be completed within thirty (30) days from the filing of the
4 petition in error. Any response to the petition in error shall be
5 filed within twenty (20) days from the filing of the petition in
6 error.

7 4. The briefing schedule is established as follows:

8 a. appellant's brief in chief shall be filed twenty (20)
9 days after the trial court clerk notifies all parties
10 that the record is complete and such notice has been
11 filed in the office of the Clerk of the Supreme Court,

12 b. appellant's answer brief shall be filed fifteen (15)
13 days after the appellant's brief in chief is filed,
14 and

15 c. appellant's reply brief may be filed within ten (10)
16 days after the appellee's answer brief is filed.

17 ~~J.~~ K. Any appeal when docketed should have priority over all
18 cases pending on said docket. Adjudication of appeals and any other
19 proceedings concerning the termination of parental rights or the
20 determination that a child is eligible for adoption without consent
21 which does not terminate parental rights pursuant to this section
22 shall be expedited by the Supreme Court.

23 ~~K.~~ L. The pendency of an appeal shall not suspend the order of
24 the district court regarding a minor, nor shall it remove the minor

1 from the custody of that court or of the person, institution, or
2 agency to whose care such minor has been committed, unless the
3 Supreme Court shall so order.

4 ~~E.~~ M. 1. The termination of parental rights terminates the
5 parent-child relationship, including the parent's right to the
6 custody of the child and the parent's right to visit the child, the
7 parent's right to control the child's training and education, the
8 necessity for the parent to consent to the adoption of the child,
9 the parent's right to the earnings of the child, and the parent's
10 right to inherit from or through the child. Provided, that this
11 subsection shall not in any way affect the right of the child to
12 inherit from the parent.

13 2. Termination of parental rights pursuant to this section
14 shall not terminate the duty of either parent to support the minor
15 child of such parent. The duty of the parent to support the minor
16 child shall not be terminated until such time as a final decree of
17 adoption has been entered.

18 3. A determination that the consent to adoption is not required
19 from the parent of a minor shall not, by itself, act to relieve such
20 parent of the obligation to provide for the support of the minor as
21 otherwise required by law. The duty of the parent to support the
22 minor child shall not be terminated until such time as a final
23 decree of adoption has been entered.

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1 SECTION 2. AMENDATORY 43 O.S. 2011, Section 105, is
2 amended to read as follows:

3 Section 105. A. A proceeding for dissolution of marriage, an
4 annulment of a marriage, or a legal separation shall be titled "In
5 re the Marriage of _____ and _____".

6 B. The initial pleading in all proceedings under this title
7 shall be denominated a petition. The person filing the petition
8 shall be called the petitioner. A responsive pleading shall be
9 denominated a response. The person filing the responsive pleading
10 shall be called the respondent. Other pleadings shall be
11 denominated as provided in the Rules of Civil Procedure, except as
12 otherwise provided in this section.

13 C. The petition must be verified as true, by the affidavit of
14 the petitioner.

15 D. A summons may issue thereon, and shall be served, or
16 publication made, as in other civil cases.

17 E. Wherever it occurs in this title or in any other title of
18 the Oklahoma Statutes or in any forms or court documents prepared
19 pursuant to the provisions of the Oklahoma Statutes, the term
20 "divorce" shall mean and be deemed to refer to a "dissolution of
21 marriage" unless the context or subject matter otherwise requires.

22 F. If the whereabouts of the respondent is not known, the
23 petitioner may serve notice by publication, provided that due
24 diligence is demonstrated by an affidavit. The actions listed in

1 paragraphs 1 through 10 of this subsection shall be included on each
2 affidavit. The petitioner shall file with the court which action or
3 actions listed in paragraphs 1 through 10 have been taken by the
4 petitioner on the affidavit:

5 1. Verifying that the petitioner has attempted to serve the
6 respondent at the last-known address of the respondent by certified
7 mail, restricted delivery, return receipt requested;

8 2. Verifying that the petitioner has attempted to contact or
9 question the friends and family of the respondent as well as any
10 employers known to the petitioner;

11 3. Verifying that the petitioner has checked telephone
12 directories of the area of the last-known residence of the
13 respondent;

14 4. Verifying that the petitioner has used a locate and research
15 company or private investigator to find the respondent;

16 5. Verifying that the petitioner has searched for the
17 respondent using people-finder services on the Internet, and by
18 searching Internet social networks, such as Facebook;

19 6. Verifying that the petitioner has contacted utility
20 companies or service providers in the area of the last-known
21 residence of the respondent;

22 7. Verifying that the petitioner has searched property tax
23 listings in the area of the last-known residence of the respondent;
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