

1 **SENATE FLOOR VERSION**

2 April 9, 2019

3 ENGROSSED HOUSE
4 BILL NO. 1036

By: Walke and Lawson of the
House

5 and

6 Rosino of the Senate

7
8
9 An Act relating to children; amending 10A O.S. 2011,
10 Sections 1-4-709, as amended by Section 1, Chapter
11 242, O.S.L. 2016 and 1-4-906 (10A O.S. Supp. 2018,
12 Section 1-4-709), which relate to the Oklahoma
13 Children's Code; prohibiting guardianship if
14 prospective guardian is the child's parent and
15 parental rights have been terminated; excluding
16 parent's right to apply for guardianship of child
17 after termination of parental rights; barring
18 Department of Human Services from recommending
19 certain people seek guardianship of child in custody;
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-709, as
23 amended by Section 1, Chapter 242, O.S.L. 2016 (10A O.S. Supp. 2018,
24 Section 1-4-709), is amended to read as follows:

Section 1-4-709. A. The court may establish a permanent
guardianship between a child and a relative or other adult if the
guardianship is in the child's best interests and all of the
following conditions are substantially satisfied:

- 1 1. The child has been adjudicated to be a deprived child;
- 2 2. The parent has:
 - 3 a. consented to the guardianship,
 - 4 b. had his or her parental rights terminated,
 - 5 c. failed to substantially correct the conditions that
 - 6 led to the adjudication of the child,
 - 7 d. been adjudicated as incompetent or incapacitated by a
 - 8 court,
 - 9 e. abandoned the child,
 - 10 f. failed to be identified or has not been located
 - 11 despite reasonably diligent efforts to ascertain the
 - 12 whereabouts of the parent, or
 - 13 g. died;
- 14 3. The child consents to the guardianship if the court finds
- 15 the child to be of sufficient intelligence, understanding, and
- 16 experience to provide consent;
- 17 4. Termination of the parent's rights is either not legally
- 18 possible or not in the best interests of the child or adoption is
- 19 not the permanency plan for the child;
- 20 5. The child and the prospective guardian do not require
- 21 protective supervision or preventive services to ensure the
- 22 stability of the guardianship;

1 6. The prospective guardian is committed to providing for the
2 child until the child reaches the age of majority and to preparing
3 the child for adulthood and independence;

4 7. The prospective guardian agrees not to return the child to
5 the care of the person from whom the child was removed nor to allow
6 visitation without the approval of the court; and

7 8. The child has been residing or placed with the proposed
8 guardian for at least the six (6) preceding months or the permanent
9 guardian is a relative with whom the child has a relationship.

10 B. In proceedings for permanent guardianship, the court shall
11 give primary consideration to the physical and behavioral health
12 needs of the child.

13 C. A permanent guardianship pursuant to subsection A of this
14 section shall not be permitted if ~~the~~ the:

15 1. The prospective guardian would be denied placement as a
16 prospective foster or adoptive parent pursuant to subsection C of
17 Section 1-4-705 of this title ~~or if the~~;

18 2. The prospective guardian is subject to the Oklahoma Sex
19 Offenders Registration Act or living with an individual subject to
20 the Oklahoma Sex Offenders Registration Act; or

21 3. The prospective guardian is the parent of the child and has
22 had his or her parental rights terminated.

23 D. Unless otherwise set forth in the final order of permanent
24 guardianship, a permanent guardian is vested with all of the rights

1 and responsibilities as set forth in Title 30 of the Oklahoma
2 Statutes relating to the powers and duties of a guardian of a minor,
3 other than those rights and responsibilities retained by the child's
4 parent, if any, that are set forth in the decree of permanent
5 guardianship.

6 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-4-906, is
7 amended to read as follows:

8 Section 1-4-906. A. The termination of parental rights
9 terminates the parent-child relationship, including:

- 10 1. The parent's right to the custody of the child;
- 11 2. The parent's right to visit the child;
- 12 3. The parent's right to control the child's training and
13 education;
- 14 4. The parent's right to apply for guardianship of the child;
- 15 5. The necessity for the parent to consent to the adoption of
16 the child;
- 17 ~~5.~~ 6. The parent's right to the earnings of the child; and
- 18 ~~6.~~ 7. The parent's right to inherit from or through the child.

19 Provided, that nothing herein shall in any way affect the right of
20 the child to inherit from the parent.

21 B. 1. Except for adoptions as provided in paragraph 3 of this
22 subsection, termination of parental rights shall not terminate the
23 duty of either parent to support his or her minor child.

24

1 2. Any order terminating parental rights shall indicate that
2 the duty of the parent to support his or her minor child will not be
3 terminated unless the child is subsequently adopted as provided by
4 paragraph 3 of this subsection.

5 3. Child support orders shall be entered by the court that
6 terminates parental rights and shall remain in effect until the
7 court of termination receives notice from the placing agency that a
8 final decree of adoption has been entered and then issues an order
9 terminating child support and dismissing the case.

10 C. The Department of Human Services shall not recommend a
11 parent who has had his or her parental rights terminated to seek
12 guardianship of a child in the custody of the Department.

13 SECTION 3. This act shall become effective November 1, 2019.
14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
15 April 9, 2019 - DO PASS

16
17
18
19
20
21
22
23
24