

1 ENGROSSED HOUSE
2 BILL NO. 1036

By: Walke and Lawson of the
House

3 and

4 Rosino of the Senate
5

6
7 An Act relating to children; amending 10A O.S. 2011,
8 Sections 1-4-709, as amended by Section 1, Chapter
9 242, O.S.L. 2016 and 1-4-906 (10A O.S. Supp. 2018,
10 Section 1-4-709), which relate to the Oklahoma
11 Children's Code; prohibiting guardianship if
12 prospective guardian is the child's parent and
13 parental rights have been terminated; excluding
14 parent's right to apply for guardianship of child
15 after termination of parental rights; barring
16 Department of Human Services from recommending
17 certain people seek guardianship of child in custody;
18 and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-709, as
amended by Section 1, Chapter 242, O.S.L. 2016 (10A O.S. Supp. 2018,
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. The child has been adjudicated to be a deprived child;

1 2. The parent has:

2 a. consented to the guardianship,

3 b. had his or her parental rights terminated,

4 c. failed to substantially correct the conditions that
5 led to the adjudication of the child,

6 d. been adjudicated as incompetent or incapacitated by a
7 court,

8 e. abandoned the child,

9 f. failed to be identified or has not been located
10 despite reasonably diligent efforts to ascertain the
11 whereabouts of the parent, or

12 g. died;

13 3. The child consents to the guardianship if the court finds
14 the child to be of sufficient intelligence, understanding, and
15 experience to provide consent;

16 4. Termination of the parent's rights is either not legally
17 possible or not in the best interests of the child or adoption is
18 not the permanency plan for the child;

19 5. The child and the prospective guardian do not require
20 protective supervision or preventive services to ensure the
21 stability of the guardianship;

22 6. The prospective guardian is committed to providing for the
23 child until the child reaches the age of majority and to preparing
24 the child for adulthood and independence;

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

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

7 B. In proceedings for permanent guardianship, the court shall
8 give primary consideration to the physical and behavioral health
9 needs of the child.

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

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

15 2. The prospective guardian is subject to the Oklahoma Sex
16 Offenders Registration Act or living with an individual subject to
17 the Oklahoma Sex Offenders Registration Act; or

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

20 D. Unless otherwise set forth in the final order of permanent
21 guardianship, a permanent guardian is vested with all of the rights
22 and responsibilities as set forth in Title 30 of the Oklahoma
23 Statutes relating to the powers and duties of a guardian of a minor,
24 other than those rights and responsibilities retained by the child's

1 parent, if any, that are set forth in the decree of permanent
2 guardianship.

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

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

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

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

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

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

