

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1036

By: Walke

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5  
6 AS INTRODUCED

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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24 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.

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

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

9           SECTION 3. This act shall become effective November 1, 2019.

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