SHORT TITLE: Children; authorizing a court-appointed special advocate to children in certain circumstances; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 68 By: Roberts

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995 and as last amended by Section 15, Chapter 353, O.S.L. 1996, Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 247, O.S.L. 1996 and Section 123, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Sections 7001-1.3, 7301-1.3 and 7303-3.1), which relate to the Oklahoma Children's Code, Oklahoma Juvenile Code and custodial interrogation; modifying a definition; adding a definition; authorizing a court-appointed special advocate for children in certain circumstances; amending Section 2, Chapter 298, O.S.L. 1992, as last amended by Section 3, Chapter 254, O.S.L. 1995 and Section 10, Chapter 298, O.S.L. 1992, as amended by Section 9, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Sections 5-502 and 5-510), which relate to the Inpatient Mental Health Treatment of Children Act; adding a definition; authorizing appointment of a court-appointed special advocate in certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1101, as renumbered by Section 199, Chapter 352, O.S.L. 1995 and as last amended by Section 15, Chapter 353, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7001-1.3), is amended to read as follows:

Section 7001-1.3 When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Part 3 of Article III of this Code are supported by the evidence and whether a child should be adjudged to be a ward of the court;

2. "Child" means any person under eighteen (18) years of age except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

3. "Child in need of mental health treatment" means a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act;

4. "Child with a disability" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional;

5. "Child-placing agency" means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements; and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act;

6. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation.

Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

7. "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the court to serve as an officer of the court and represent any child ~~wherein a juvenile petition has been filed~~ over whom the district court exercises jurisdiction, based on the availability of volunteers, until discharged by the court. It shall be the duty and responsibility of the court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement. A court-appointed special advocate shall not have any financial responsibility in any matter relating to a child represented by the court-appointed special advocate;

8. "Day treatment" means a nonresidential program which provides intensive services to children who reside in their own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

9. "Department" means the Department of Human Services;

10. a. "Deprived child" means a child:

(1) who is for any reason destitute, homeless, or abandoned,

(2) who does not have the proper parental care or guardianship or whose home is an unfit place for

the child by reason of neglect, abuse, cruelty, or depravity on the part of the child's parents, legal guardian, or other person responsible for the child's health or welfare,

(3) who is a child in need of special care and treatment because of his physical or mental condition including, but not limited to, a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment,

(4) who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,

(5) who is, due to improper parental care and guardianship, absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if said child is subject to compulsory school attendance, or

(6) whose parent or legal custodian for good cause desires to be relieved of custody.

b. (1) Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(2) Nothing contained in this subparagraph shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

The phrase "dependent and neglected" shall be deemed to mean deprived;

11. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the court;

12. "Emergency custody" means court-ordered custody of a child prior to adjudication of the child;

13. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children;

14. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child, in foster placement, while the child needs foster care;

15. "Foster child" means a child placed in foster placement;

16. "Foster family" means all persons living in a foster family home, other than a foster child;

17. "Foster family home" means the private residence of a family which provides foster care services to a child. Such term shall include a foster family home, a therapeutic foster family home, the home of a relative, or a kinship care home;

18. "Foster parent" means any individual maintaining a foster family home, who is responsible for the care of a foster child;

19. "Foster placement" means a child-placing agency or foster family home providing foster care services;

20. "Group home" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents;

21. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, minimal direct staff supervision, and supportive services to assist with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

22. "Institution" means a residential facility offering care and treatment for more than twenty residents;

23. "Investigation" means a mandatory preadjudicatory process by the Department to determine the safety of a child and to make a recommendation to the district attorney as to whether a petition should be filed alleging a child to be a deprived child or whether other nonadjudicatory alternatives are available;

24. "Kinship care" means full-time care of a child by relatives, members of the relative's clan, stepparents, or other adults who have an existing bond with the child and to whom have

been ascribed a family relationship role with the child's parents and the child;

25. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

26. "Multidisciplinary personnel" means any team of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of child physical and sexual abuse cases and who are qualified to facilitate a broad range of interventions and services related to child abuse;

27. "Out-of-home placement" means a placement, other than a placement in the home of the parent or guardian from whose custody the court has removed the child, until the child is reunified with the child's parents;

28. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

29. "Preliminary inquiry" means an assessment and determination as to whether there is sufficient information to proceed with an investigation of abuse or neglect of a child or an investigation of failure to protect by the person responsible for the child when there are allegations of abuse or neglect;

30. "Permanent custody" means court-ordered custody of an adjudicated deprived child whose parental rights have been terminated;

31. "Protective custody" means custody of a child taken pursuant to Part 2 of Article III of this Code;

32. "Relative" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child within the fourth degree of consanguinity;

33. "Residential child care center" means a twenty-four-hours-a-day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents;

34. "Responsible adult" for purposes of the release of a child from protective custody, means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in another person's absence who is eighteen (18) years of age or older;

35. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

36. "Therapeutic foster home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

37. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juvenile delinquents;

38. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

39. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and

abilities necessary for successful adult living. Said program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

40. "Treatment and service plan" means a written document which includes ~~as~~ at least the following:

a. a description of the type of home or facility in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child, and

b. a plan for assuring that the child receives proper care and that services are provided to the parents, child, and placement providers in order to improve the conditions in the parents' home, facilitate return of the child to the child's own home or to an alternate permanent placement, and address the needs of the child while in out-of-home care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

SECTION 2. AMENDATORY Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7301-1.3), is amended to read as follows:

Section 7301-1.3 When used in the Oklahoma Juvenile Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Article III of the Oklahoma Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

2. "Alternatives to secure detention" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Board of Juvenile Affairs and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. "Board" means the Board of Juvenile Affairs;

4. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 7306-1.1 of this title, or any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree pursuant to subsection B of Section 7306-1.1 of this title, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of this title, or any individual against whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of this title, any individual against whom the imposition of judgment and sentence has been deferred after certification as an adult pursuant to Section 7303-4.3 of this title; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 7306-1.1 of this title, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of this title, shall continue to be subject to the jurisdiction of the juvenile court;

5. "Child or juvenile in need of mental health treatment" means a juvenile in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act;

6. "Child or juvenile in need of supervision" means a juvenile who:

a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,

b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,

c. is willfully and voluntarily absent from school, as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the juvenile is subject to compulsory school attendance, or

d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

7. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the juvenile, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

8. "Community intervention center" means a facility which serves as a receiving center for children who are taken into custody and which performs at least one of the functions provided for in subsection D of Section 7302-3.3 of this title;

9. "Community residential center" means a residential facility for no more than twenty juveniles which offers a range of services including personal and social services, and emphasizes normal group

living, school attendance, securing employment, and general participation in the community;

10. "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the court to serve as an officer of the court and represent any child over whom the district court exercises jurisdiction, based on the availability of volunteers, until discharged by the court. It shall be the duty and responsibility of the court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement. A court-appointed special advocate shall not have any financial responsibility in any matter relating to a child represented by the court-appointed special advocate;

11. "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

~~11.~~ 12. "Delinquent child or juvenile" means a juvenile who:

a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, has violated any lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or

b. has habitually violated traffic laws or traffic ordinances;

~~12.~~ 13. "Department" means the Department of Juvenile Justice;

~~13.~~ 14. "Deputy Director" means the Deputy Director of the Department of Juvenile Justice;

~~14.~~ 15. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

~~15.~~ 16. "Executive Director" means the Executive Director of the Office of Juvenile Affairs;

~~16.~~ 17. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles;

~~17.~~ 18. "Group home" means a residential facility housing no more than twelve juveniles with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents;

~~18.~~ 19. "Independent living program" means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

~~19.~~ 20. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

a. have a program which includes community participation and community-based services, or

b. be a secure facility with a program exclusively designed for a particular category of resident;

~~20.~~ 21. "Juvenile detention facility" means a secure facility which meets the certification standards of the Department and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children;

~~21.~~ 22. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

~~22.~~ 23. "Office" means the Office of Juvenile Affairs;

~~23.~~ 24. "Person responsible for a juvenile's health or welfare" includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

~~24.~~ 25. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Oklahoma Juvenile Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

~~25.~~ 26. "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a Department of Juvenile Justice facility directly or by contract under prescribed conditions and under supervision by the Department, subject to return to the court for violation of any of the conditions prescribed;

~~26.~~ 27. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

~~27.~~ 28. "Secure detention" means the temporary care of juveniles who require secure custody in physically restricting facilities:

a. while under the continuing jurisdiction of the court pending court disposition, or

b. pending placement by the Department of Juvenile Justice after adjudication;

~~28.~~ 29. "Training school" or "secure facility" means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents; and

~~29.~~ 30. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

SECTION 3. AMENDATORY Section 123, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7303-3.1), is amended to read as follows:

Section 7303-3.1 A. No information gained by a custodial interrogation of a child nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the Department of Juvenile Justice is done in the presence of the parents, guardian, attorney, or legal custodian of the child. No such custodial interrogation shall commence until the child and the parents, or

guardian, or other legal custodian of the child have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, "custodial interrogation" means questioning of a child while that child is in law enforcement custody or while that child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the Department. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term "custodial interrogation" shall not be deemed to mean questioning of a child by a public school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the Department. Any information gained from noncustodial questioning of a child by a public school administrator or teacher concerning a wrongful act committed on public school property shall be admissible into evidence against the child.

B. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court if a petition has been filed alleging that the child is a child in need of supervision, or if termination of parental rights is a possible remedy, provided that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian. If

the child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of Section 7303-1.3 of ~~Title 10 of the Oklahoma Statutes~~ this title, the court shall appoint a separate attorney, who shall not be a district attorney, for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel.

C. Whenever a petition is filed alleging that a child is a delinquent child or a child in need of supervision, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child or the attorney of the child and whenever a court-appointed special advocate is available to the court to serve as a guardian ad litem regardless of whether or not a guardian ad litem has been requested by the child or the attorney of the child. The Court-Appointed Special Advocate Program shall be made available to each judicial district.

1. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of the court, an employee of a juvenile bureau, or an employee of any public agency having duties or responsibilities towards the child.

2. Whenever a court-appointed special advocate is available for appointment as a guardian ad litem as provided by this subsection, the court shall give priority to the appointment of a court-appointed special advocate as the guardian ad litem.

D. 1. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or Section ~~846 of Title 21 of the Oklahoma Statutes~~ 7103 of this title.

2. A court-appointed special advocate shall serve without compensation and shall have other qualifications and duties and responsibilities as may be prescribed by the Supreme Court.

3. Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in a position of management of a CASA organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any CASA organization advocates, managers, or directors.

E. It shall be unlawful and a misdemeanor for the Office of Juvenile Affairs, the Department of Juvenile Justice, any person employed by the Office or the Department, or any other public officer or employee, to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

SECTION 4. AMENDATORY Section 2, Chapter 298, O.S.L. 1992, as last amended by Section 3, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Section 5-502), is amended to read as follows:

Section 5-502. As used in the Inpatient Mental Health Treatment of Children Act:

1. "Child" means any person under eighteen (18) years of age;

2. "Child in need of mental health treatment" means a child:

   a. who has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person if mental health services are not provided and has engaged in one or more recent overt acts or made significant

recent threats which substantially support that expectation, or

b. who has a demonstrable mental illness of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the child's life: family relations, school performance, social interactions or ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or self-protection. A determination regarding the ability of the child to perform independently said basic tasks shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to perform said tasks.

The term "child in need of mental health treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria for a child in need of treatment pursuant to subparagraphs a and b of this paragraph;

3. "Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a child fourteen (14) years of age or older and by a parent having custody of the child or a legally authorized custodian;

4. "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the court to serve as an officer of the court and represent any child over whom the district court exercises jurisdiction, based on the availability of volunteers, until discharged by the court. It shall be the duty of the court-appointed special advocate to advocate for the best

interests of the child and to assist the child in obtaining a permanent, safe, homelike placement. A court-appointed special advocate shall not have any financial responsibility in any matter relating to a child represented by the court-appointed special advocate;

5. "Independent" means a licensed mental health professional conducting an outpatient or inpatient mental health evaluation and submitting a report to the district attorney or court pursuant to the provisions of the Inpatient Mental Health Treatment of Children Act who is not and will not be treating the child and has no financial interest in a facility in which the child will be placed or any significant interest in the hospitalization of the child that would constitute a conflict of interest, and has signed an affidavit to that effect, provided, a licensed mental health professional employed by a community mental health center shall be exempt from the requirement that he or she is not and will not be treating the child;

~~5.~~ 6. "Individualized treatment plan" means a specific plan for the care and treatment of an individual child who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the child's family, consistent with the child's desire for confidentiality and with the treatment needs of the child, and shall clearly include the following:

a. a statement of the presenting problems of the child, short- and long-term treatment goals and the estimated date of discharge. The short- and long-term goals shall be based upon a clinical evaluation and shall include specific behavioral and emotional goals against which the success of treatment can be measured,

b. treatment methods and procedures to be used to achieve these goals, which methods and procedures are related

to each of these goals and which include, but are not limited to, specific prognosis for achieving each of these goals,

c. identification of the types of professional personnel who will carry out the treatment procedures including, but not limited to, appropriate licensed mental health professionals, education professionals, and other health or social service professionals,

d. documentation of the involvement of the child in the development of the treatment plan and:

(1) the involvement of a parent in the development of the treatment plan and the consent of the child to the plan, or

(2) when the child is in the legal custody of a public or private child care agency, the involvement of a designated representative of the agency in the development of the treatment plan and documentation of the consent of the agency to the treatment plan;

~~6.~~ 7. "Inpatient treatment" means mental health treatment services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health facility for the purpose of observation, evaluation or treatment;

~~7.~~ 8. "Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the child or to protect the child or others from physical injury;

~~8.~~ 9. "Less restrictive alternative to inpatient treatment" means and includes but is not limited to outpatient counseling services, including services provided in the home of the child and

which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care, as defined by Title 10 of the Oklahoma Statutes, through a program established and specifically designed to meet the needs of children in need of mental health treatment, or a combination thereof;

~~9.~~ 10. "Licensed mental health professional" means a person who has received specific training for and is experienced in performing mental health therapeutic, diagnostic or counseling functions and is not related by blood or marriage to the person being examined or does not have any interest in the estate of the person being examined, and who is:

a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,

b. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,

c. a licensed professional counselor as defined in Section 1902 of Title 59 of the Oklahoma Statutes,

d. a person licensed as a licensed social worker pursuant to the provisions of the Licensed Social Workers Act, Section 1250 et seq. of Title 59 of the Oklahoma Statutes, or

e. a Doctor of Medicine who is duly licensed to practice by the State Board of Medical Licensure and Supervision, or a Doctor of Osteopathy who is duly licensed to practice by the Oklahoma Board of Osteopathic Examiners, or a qualified examiner as defined in Section 1-103 of this title.

For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of this state;

~~10.~~ 11. "Mental health evaluation" means an examination or evaluation of a child for the purpose of making a determination whether, in the opinion of the licensed mental health professional making the evaluation, the child is a child in need of mental health treatment and, if so, is in need of inpatient mental health treatment and for the purpose of preparing reports or making recommendations for the most appropriate and least restrictive treatment for the child;

~~11.~~ 12. "Mental health facility" means a public or private hospital or related institution as defined by Section 1-701 of Title 63 of the Oklahoma Statutes offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner of the Department of Mental Health and Substance Abuse Services as appropriate for the inpatient evaluation or treatment of children;

~~12.~~ 13. "Mental illness" means a substantial disorder of the child's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;

~~13.~~ 14. "Parent" means:

a. a biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint decree or agreement, or

b. a person judicially appointed as a legal guardian of the child, or

c. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal custody by delegation from a parent, as provided by law;

~~14.~~ 15. "Person responsible for the supervision of the case" means:

a. when the child is a ward of the court and in the legal custody of a public or private child care agency, the caseworker or other person designated by the agency to supervise the case, or

b. when the child is a ward of the court and under the court-ordered supervision of the Department of Human Services or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services or juvenile bureau to supervise the case;

~~15.~~ 16. "Prescreening" means a face-to-face mental health evaluation conducted by a licensed mental health professional to determine whether a child requires an inpatient evaluation or an emergency mental health admission and may include consultation with other mental health professionals and a review of all available records on the child;

~~16.~~ 17. "Ward of the court" means a child adjudicated to be a deprived child, a child in need of supervision, or a delinquent child; and

~~17.~~ 18. "Treatment" means any planned intervention intended to improve a child's functioning in those areas which show impairment as a result of mental illness.

SECTION 5. AMENDATORY Section 10, Chapter 298, O.S.L. 1992, as amended by Section 9, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Section 5-510), is amended to read as follows:

Section 5-510. A. Upon the filing of a petition alleging a child to be a child in need of mental health treatment, the court shall:

1. If the child is not represented by counsel, appoint an attorney to represent the child. An attorney so appointed shall consult with the child at least twenty-four (24) hours prior to the date set for hearing the petition. In addition, the court may appoint a guardian ad litem who may be a court-appointed special advocate as provided by Section ~~1109~~ 7003-3.7 of Title 10 of the Oklahoma Statutes;

2. Set a date for a hearing on the petition. Said date shall not be less than one (1) day, or more than three (3) days, excluding weekends and legal holidays, from the date of the filing of the petition. Upon the request of the attorney for the child, the date of the hearing may be extended once for up to an additional three (3) days, excluding weekends and holidays; and

3. Cause notice of the date, time, place and purpose of the hearing to be given to the petitioner, the child, and, if not the petitioner, the parents of the child and, if applicable, the person in charge of the mental health facility. If the child is a ward of the court, and if not the petitioner, notice shall also be given to a public or private child care agency having legal custody of the child, if any, or to the person at the Department of Human Services, the Office of Juvenile Affairs or the applicable juvenile bureau responsible for the supervision of the case. Said notice shall be given at least twenty-four (24) hours prior to the date set for the hearing and shall be given in such manner as directed by the court.

B. The report of a mental health evaluation of the child by an independent licensed mental health professional shall be attached to a petition for an order committing a child to a facility for inpatient mental health treatment.

1. If the court finds the report submitted with the petition to be inadequate to aid the court in the disposition of the case, the court shall order an independent mental health evaluation of the child and the preparation of a proposed individualized treatment plan for the child.

2. The court may order such other reports as it deems necessary in order to aid the court in the disposition of the case.

SECTION 6. This act shall become effective November 1, 1997.

46-1-0137 JT