

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1554

By: Weedn

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1109, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 12, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7003-3.7), which relates to child abuse and neglect proceedings; prohibiting imposition of specified payments against a parent, legal guardian or custodian; expanding list of entities that shall not serve as a guardian ad litem; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1109, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 12, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1999, Section 7003-3.7), is amended to read as follows:

- Section 7003-3.7 A. 1. a. If the parents, legal guardian or 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 deprived child 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, legal guardian or custodian.
- b. The court shall not be required to appoint an attorney for any person other than for the parents, legal

guardian or custodian of the child pursuant to the provisions of this paragraph.

c. If a parent, legal guardian or custodian of a child is found eligible for appointment of counsel pursuant to the provisions of this subsection, no payment of a partial fee, contribution or assessment shall be imposed against the parent, legal guardian or custodian as a condition precedent for such appointment.

2. a. If the child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of this part, the court shall appoint a separate attorney, who shall not be a district attorney, regardless of any attempted waiver by the parent, legal guardian or custodian of the child of the right of the child to be represented by counsel.

b. The attorney appointed for the child shall make arrangements to meet with the child as soon as possible after receiving notification of the appointment. Except for good cause shown, the attorney shall meet with the child not less than twenty-four (24) hours prior to any hearing in such proceeding. The attorney may speak with the child over the telephone if a personal visit is not possible due to exigent circumstances. If a meaningful attorney-client relationship between the child and the attorney is prohibited due to age or disability of the child, the attorney shall contact the custodian or caretaker of the child prior to the hearing.

c. The attorney shall be given access to all reports, records and other information relevant to the case and to any reports of examination of the child's parents,

legal guardian or custodian made pursuant to this section. The attorney shall represent the child and any expressed interests of the child. The attorney shall make such further inquiry as the attorney deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the legal interests of the child.

3. The attorney shall be allowed a reasonable fee for such services as determined by the court, as authorized by law.

B. 1. Whenever a petition is filed alleging that a child is a deprived child, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition.

2. The court shall appoint a guardian ad litem upon the request of the child, the attorney of the child, the Department of Human Services, a licensed child-placing agency, or any other party to the action.

3. A guardian ad litem shall not be a parent of the child or the legal custodian of the child, a district attorney, an employee of the office of the district attorney, the child's 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.

4. The guardian ad litem shall be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, foster parents, health care providers, child protective services workers and any other person with knowledge relevant to the case,
- b. advocate for the child's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. maintain the confidentiality of information related to a case as required by Article 7 of the Oklahoma Children's Code,
- d. monitor the child's best interests throughout any judicial proceeding, and
- e. present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

5. The guardian ad litem shall be given access to the court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to the laws relating to child abuse and neglect including reports generated by service providers.

C. 1. Whenever a court-appointed special advocate is available to the court to serve as a guardian ad litem, priority shall be given to appointment of the court-appointed special advocate to serve as guardian ad litem for the child regardless of whether a guardian ad litem has been requested pursuant to the provisions of this subsection.

2. A Court-Appointed Special Advocate Program shall be made available to each judicial district.

3. For purposes of the Oklahoma Children's Code, the term "court-appointed special advocate" shall have the same meaning as "guardian ad litem". In like manner, a court-appointed special advocate, except as specifically otherwise provided by law or by the court, shall have the same power, duties and responsibilities as assigned to a guardian ad litem by law and shall have such other qualifications, duties and responsibilities as may be prescribed by rule by the Oklahoma Supreme Court.

4. A court-appointed special advocate shall serve without compensation.

D. 1. 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.

2. Any person serving in positions of management of a court-appointed special advocate 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 court-appointed special advocate organization advocates, managers, or directors.

E. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.