

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1560

By: Cain

AS INTRODUCED

An Act relating to guardian and ward; defining terms; requiring specified entities to develop certain guidelines for court-appointed advocates for vulnerable adults programs; providing for appointment and request of a guardian ad litem for a vulnerable adult; specifying eligible requestors; limiting those who can act as guardians; providing for duties of the guardian ad litem; allowing access to court and agency files and certain other information; requiring priority of appointment; requiring certain program in each judicial district; defining terms; providing for like powers and duties; requiring service without compensation by a court-appointed advocate for vulnerable adults; providing for presumptions and immunity from liability; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-105.1 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Court-appointed advocates for vulnerable adults" or "CAAVA" means a responsible adult who has been trained and is supervised by a court-appointed advocate for a vulnerable adult program recognized by the court, and who has volunteered to be available for appointment under this section to serve as an officer of the court, as a guardian ad litem to represent the best interests of any vulnerable adult over whom the district court exercises jurisdiction, until discharged by the court;

2. "Court-Appointed Advocates for Vulnerable Adults Program" means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent,

not-for-profit corporation, or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem, to represent the best interests of a vulnerable adult;

3. "Vulnerable adult" means a person, eighteen (18) years of age or older, for whom a guardianship petition has been filed alleging abuse, neglect or exploitation, or who is disabled; and

4. "Best interests" means a determination with regard to a vulnerable adult that is made from the perspective of the vulnerable adult, considering, but without giving primary importance to, the convenience of the vulnerable adult's relatives, caregivers or health care providers, and without regard for the perceived quality of life of the vulnerable adult or the vulnerable adult's perceived nearness to death.

B. The following entities shall collectively develop policy guidelines for court-appointed advocates for vulnerable adults programs:

1. Oklahoma Planning Council on Developmental Disabilities;
2. Court-appointed special advocates (CASA);
3. Aging Services Division of the Department of Human Services;
4. Adult Protective Services Program Office;
5. Office of Public Guardian;
6. Advocacy Partnership for Aging Oklahomans;
7. The State Long-term Care Ombudsman; and
8. The Developmental Disabilities Division of the Department of Human Services.

C. 1. Whenever a petition is filed alleging that a potential ward, hereinafter referred to as a vulnerable adult, is abused, neglected, exploited or disabled, or for any other action related to the vulnerable adult, the court may appoint a guardian ad litem for the vulnerable adult at any time subsequent to the filing of the petition.

2. The court shall appoint a guardian ad litem upon the request of the vulnerable adult, the attorney of the vulnerable adult, the Office of Public Guardian, the Adult Protective Services Program Office Aging Services Division and the Developmental Disabilities Services Division within the Department of Human Services, the Office of the State Long-Term Care Ombudsman, the state legal services developer, or any other party to the action.

3. A guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, the vulnerable adult's attorney, an employee of the court, or an employee of any public agency having duties or responsibilities related to the vulnerable adult.

4. The guardian ad litem shall be appointed to advocate objectively on behalf of the vulnerable adult and act as an officer of the court to investigate all matters concerning the best interests of the vulnerable adult. 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 vulnerable adult in appropriate settings, and interview relatives, health care providers, adult protective services workers and any other persons with knowledge relevant to the case,
- b. advocate for the vulnerable adult's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the vulnerable adult when necessary,
- c. maintain the confidentiality of information related to the case,
- d. monitor the vulnerable adult's best interests throughout any judicial proceeding, and

- e. present written reports on the vulnerable adult'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 vulnerable adult's relatives, guardian or custodian, made pursuant to the laws relating to adult abuse and neglect, including reports generated by service providers.

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

2. A Court-Appointed Advocates for Vulnerable Adults (CAAVA) Program shall be made available to each judicial district.

3. For purposes of this section, the terms "court-appointed advocate for vulnerable adults" and "guardian ad litem" shall have the same function. In like manner, a court-appointed advocate for vulnerable adults, 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 of the Supreme Court.

4. A court-appointed advocate for vulnerable adults shall serve without compensation.

E. 1. Any person participating in a judicial proceeding as a court-appointed advocate for vulnerable adults 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 a management position of a court-appointed advocate for vulnerable adults organization, including a member 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 advocate for vulnerable adults organization advocates, managers or directors.

SECTION 2. This act shall become effective July 1, 2002.

SECTION 3. 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.

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CJ

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