

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2561

By: Peters, Askins and
Morrissette of the House

and

Paddack of the Senate

An Act relating to domestic violence; amending 10 O.S. 2001, Section 7003-3.7, which relates to the Oklahoma Children's Code; requiring annual, specialized training for certain persons; providing for the development of certain manual; * * * * amending 21 O.S. 2001, Section 644, as last amended by Section 9, Chapter 348, O.S.L. 2005 (21 O.S. Supp. 2005, Section 644), which relates to domestic abuse; modifying scope of treatment or counseling * * * * requiring annual, specialized training for guardian ad litem; providing for the development of certain manual; * * * * requiring annual review and periodic revisions to manual; providing for determination of domestic violence; providing for admissibility of certain convictions and orders; * * * * requiring termination of visitation under certain circumstances; * * * * providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to children; amending 10 O.S. 2001, Sections 40.4 and 7003-3.7, which relate to child custody proceedings; modifying certain mailing requirement; requiring development of certain manual; requiring specified certification; requiring public access to certain manual; amending 12 O.S. 2001, Section 1633, which relates to notice; allowing waiver of certain publication; amending 22 O.S. 2001, Section 1602, as amended by Section 17, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2005, Section 1602), which relates to the Domestic Violence Fatality Review Board; modifying composition of certain Board; amending 43 O.S. 2001, Section 107.3, as last amended by Section 20, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2005, Section 107.3), which relates to guardians ad litem; requiring development of certain manual; requiring specified certification; requiring public access to certain manual; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, 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.
2. a. 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. The parent, legal guardian or custodian shall not select the child's attorney. If financially capable, the parent, legal guardian or custodian shall reimburse the Court Fund for the services of a court-appointed attorney for the child.
- 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 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 or for any other action related to the child.

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 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.

6. On or before December 31, 2007, the Administrative Director of the Courts shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The Administrative Director of the Courts shall provide public access to the standard operating manual and shall periodically review and revise the manual as deemed necessary.

C. 1. Whenever a court-appointed special advocate program 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 terms "court-appointed special advocate" and "guardian ad litem" shall have the same function. 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 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 a management position of a court-appointed special advocate 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 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. AMENDATORY 10 O.S. 2001, Section 40.4, is amended to read as follows:

Section 40.4.

In all Indian child custody proceedings of the Oklahoma Indian Child Welfare Act, including voluntary court proceedings and review hearings, the court shall ensure that the district attorney or other person initiating the proceeding shall send notice to the parents or to the Indian custodians, if any, and to the tribe that is or may be the tribe of the Indian child, and to the appropriate Bureau of Indian Affairs area office, by ~~registered~~ certified mail return receipt requested. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;

2. A copy of the petition by which the proceeding was initiated;

3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:

- a. to intervene in the proceeding,
- b. to petition the court to transfer the proceeding to the tribal court of the Indian child, and
- c. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;

4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians;

5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and

6. A statement that tribal officials should keep confidential the information contained in the notice.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 1633, is amended to read as follows:

Section 1633. A. Notice of filing of ~~such~~ the petition shall be given, in the manner provided for publication notice in civil cases, by publishing the same one time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petition is filed if there be any printed in such county, and if there be none, then in some such newspaper printed in this state of general circulation in that county. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any

day after completion of the publication. The court or judge, for cause, may continue the matter to a later date.

B. The court may waive the publication requirements of this section for good cause which includes, but is not limited to, cases of domestic violence in which the court proceedings are sealed.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 1602, as amended by Section 17, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2005, Section 1602), is amended to read as follows:

Section 1602. A. The Domestic Violence Fatality Review Board shall be composed of ~~seventeen (17)~~ eighteen (18) members, or their designees, as follows:

1. Eight of the members shall be:

- a. the Chief Medical Examiner,
- b. a designee of the Attorney General. The designee shall be a person assigned to the Victims Services Unit of the Office of the Attorney General,
- c. the State Commissioner of Health,
- d. the Director of the Criminal Justice Resource Center,
- e. the Chief of Injury Prevention Services of the State Department of Health,
- f. ~~a member of the Oklahoma Council on Violence Prevention~~ Director of the Department of Human Services,
- g. the Director of the Oklahoma State Bureau of Investigation, and
- h. the Commissioner of the Department of Mental Health and Substance Abuse Services; and

2. ~~Nine~~ Ten of the members shall be appointed by the Attorney General, shall serve for terms of two (2) years and shall be eligible for reappointment. The members shall be persons having training and experience in matters related to domestic violence. The appointed members shall include:

- a. a county sheriff selected from a list of three names submitted by the executive board of the Oklahoma Sheriff's Association,
- b. a chief of a municipal police department selected from a list of three names submitted by the Oklahoma Association of Chiefs of Police,
- c. an attorney licensed in this state who is in private practice selected from a list of three names submitted by the Board of Governors of the Oklahoma Bar Association,
- d. a district attorney selected from a list of three names submitted by the District Attorneys Council,
- e. a physician selected from a list of three names submitted by the Oklahoma State Medical Association,
- f. a physician selected from a list of three names submitted by the Oklahoma Osteopathic Association,
- g. a nurse selected from a list of three names submitted by the Oklahoma Nurses Association, ~~and~~
- h. two individuals, at least one of whom shall be a survivor of domestic violence, selected from lists of three names submitted by the Oklahoma Coalition Against Domestic Violence and Sexual Assault, and
- i. a member of the Judiciary selected from a list of three names submitted by the Oklahoma Supreme Court.

B. Every two (2) years the Board shall elect from among its membership a chair and a vice-chair. The Board shall meet at least quarterly and may meet more frequently as necessary as determined by the chair. Members shall serve without compensation but may be reimbursed for necessary travel out of funds available to the Oklahoma Criminal Justice Resource Center pursuant to the State Travel Reimbursement Act; provided, that the reimbursement shall be

paid in the case of state employee members by the agency employing the member.

C. With funds appropriated or otherwise available for that purpose, the Criminal Justice Resource Center shall provide administrative assistance and services to the Domestic Violence Fatality Review Board.

SECTION 5. AMENDATORY 43 O.S. 2001, Section 107.3, as last amended by Section 20, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2005, Section 107.3), is amended to read as follows:

Section 107.3 A. 1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, the court may appoint an attorney at law as guardian ad litem ~~on the court's~~ upon motion of the court or upon application of any party to appear for and represent the minor children.

2. The guardian ad litem may 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, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,
- b. advocate for the ~~child's~~ best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

- c. monitor the ~~child's~~ best interests of the child throughout any judicial proceeding,
- d. present written reports to the parties and court prior to trial or at any other time as specified by the court on the ~~child's~~ best interests of the child that include conclusions and recommendations and the facts upon which they are based, and
- e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

3. Expenses, costs, and ~~attorney's~~ attorney fees for the guardian ad litem may be allocated among the parties as determined by the court.

4. On or before December 31, 2007, the Administrative Director of the Courts shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The Administrative Director of the Courts shall provide public access to the standard operating manual and shall periodically review and revise the manual as deemed necessary.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" shall have the same meaning as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act or shall mean the child has been adjudicated deprived as a

result of the actions or omission of either parent pursuant to the Oklahoma Children's Code; and

2. "Domestic violence" shall have the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;

2. Consider the false allegations in determining custody; and

3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

SECTION 6. This act shall become effective November 1, 2006."

Passed the Senate the 24th day of April, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2006.

Presiding Officer of the House
of Representatives