

CS for EHB 2561

1 THE STATE SENATE
2 Monday, April 10, 2006

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 2561

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2561 - By: PETERS,
7 ASKINS and MORRISSETTE of the House and PADDACK of the Senate.

8 [children - guardians ad litem - Domestic Violence Fatality
9 Review Board - effective date]

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

11 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-3.7, is
12 amended to read as follows:

13 Section 7003-3.7

14 A. 1. a. If the parents, legal guardian or custodian of the
15 child requests an attorney and is found to be without
16 sufficient financial means, counsel shall be appointed
17 by the court if a petition has been filed alleging
18 that the child is a deprived child or if termination
19 of parental rights is a possible remedy; provided that
20 the court may appoint counsel without such request, if
21 it deems representation by counsel necessary to
22 protect the interest of the parents, legal guardian or
23 custodian.

1 b. The court shall not be required to appoint an attorney
2 for any person other than for the parents, legal
3 guardian or custodian of the child pursuant to the
4 provisions of this paragraph.

5 2. a. Whenever a petition is filed pursuant to the
6 provisions of this part, the court shall appoint a
7 separate attorney, who shall not be a district
8 attorney, regardless of any attempted waiver by the
9 parent, legal guardian or custodian of the child of
10 the right of the child to be represented by counsel.
11 The parent, legal guardian or custodian shall not
12 select the child's attorney. If financially capable,
13 the parent, legal guardian or custodian shall
14 reimburse the Court Fund for the services of a court-
15 appointed attorney for the child.

16 b. The attorney appointed for the child shall make
17 arrangements to meet with the child as soon as
18 possible after receiving notification of the
19 appointment. Except for good cause shown, the
20 attorney shall meet with the child not less than
21 twenty-four (24) hours prior to any hearing in such
22 proceeding. The attorney may speak with the child
23 over the telephone if a personal visit is not possible

1 due to exigent circumstances. If a meaningful
2 attorney-client relationship between the child and the
3 attorney is prohibited due to age or disability of the
4 child, the attorney shall contact the custodian or
5 caretaker of the child prior to the hearing.

6 c. The attorney shall be given access to all reports,
7 records and other information relevant to the case and
8 to any reports of examination of the child's parents,
9 legal guardian or custodian made pursuant to this
10 section. The attorney shall represent the child and
11 any expressed interests of the child. The attorney
12 shall make such further inquiry as the attorney deems
13 necessary to ascertain the facts, to interview
14 witnesses, examine and cross-examine witnesses, make
15 recommendations to the court and participate further
16 in the proceedings to the degree appropriate for
17 adequately representing the interests of the child.

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

20 B. 1. Whenever a petition is filed alleging that a child is a
21 deprived child, the court may appoint a guardian ad litem for the
22 child at any time subsequent to the filing of the petition or for
23 any other action related to the child.

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

5 3. A guardian ad litem shall not be a district attorney, an
6 employee of the office of the district attorney, the child's
7 attorney, an employee of the court, an employee of a juvenile
8 bureau, or an employee of any public agency having duties or
9 responsibilities towards the child.

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

- 16 a. review documents, reports, records and other
17 information relevant to the case, meet with and
18 observe the child in appropriate settings, and
19 interview parents, foster parents, health care
20 providers, child protective services workers and any
21 other person with knowledge relevant to the case,
22 b. advocate for the child's best interests by
23 participating in the case, attending any hearings in

1 the matter and advocating for appropriate services for
2 the child when necessary,
3 c. maintain the confidentiality of information related to
4 a case as required by Article 7 of the Oklahoma
5 Children's Code,
6 d. monitor the child's best interests throughout any
7 judicial proceeding, and
8 e. present written reports on the child's best interests
9 that include conclusions and recommendations and the
10 facts upon which they are based.

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

17 6. On or before December 31, 2007, the Administrative Director
18 of the Courts shall develop a standard operating manual for
19 guardians ad litem which shall include, but not be limited to, legal
20 obligations and responsibilities, information concerning child
21 abuse, child development, domestic abuse, sexual abuse, and parent
22 and child behavioral health and management including best practices.
23 After publication of the manual, all guardians ad litem shall

1 certify to the court in which he or she is appointed as a guardian
2 ad litem that the manual has been read and all provisions contained
3 therein are understood. The guardian ad litem shall also certify
4 that he or she agrees to follow the best practices described within
5 the standard operating manual. The Administrative Director of the
6 Courts shall provide public access to the standard operating manual
7 and shall periodically review and revise the manual as deemed
8 necessary.

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

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

17 3. For purposes of the Oklahoma Children's Code, the terms
18 "court-appointed special advocate" and "guardian ad litem" shall
19 have the same function. In like manner, a court-appointed special
20 advocate, except as specifically otherwise provided by law or by the
21 court, shall have the same power, duties and responsibilities as
22 assigned to a guardian ad litem by law and shall have such other

1 qualifications, duties and responsibilities as may be prescribed by
2 rule by the Supreme Court.

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

5 D. 1. Any person participating in a judicial proceeding as a
6 court-appointed special advocate shall be presumed prima facie to be
7 acting in good faith and in so doing shall be immune from any civil
8 liability that otherwise might be incurred or imposed.

9 2. Any person serving in a management position of a court-
10 appointed special advocate organization, including a member of the
11 Board of Directors acting in good faith, shall be immune from any
12 civil liability or any vicarious liability for the negligence of any
13 court-appointed special advocate organization advocates, managers,
14 or directors.

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

20 SECTION 2. AMENDATORY 12 O.S. 2001, Section 1633, is
21 amended to read as follows:

22 Section 1633. A. Notice of filing of ~~such~~ the petition shall
23 be given, in the manner provided for publication notice in civil

1 cases, by publishing the same one time at least ten (10) days prior
2 to the date set for hearing in some newspaper authorized by law to
3 publish legal notices printed in the county where the petition is
4 filed if there be any printed in such county, and if there be none,
5 then in some such newspaper printed in this state of general
6 circulation in that county. The notice shall contain the style and
7 number of the case, the time, date and place where the same is to be
8 heard, and that any person may file a written protest in the case
9 prior to the date set for the hearing. The hearing date may be any
10 day after completion of the publication. The court or judge, for
11 cause, may continue the matter to a later date.

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

15 SECTION 3. AMENDATORY 22 O.S. 2001, Section 1602, as
16 amended by Section 17, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2005,
17 Section 1602), is amended to read as follows:

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

21 1. Eight of the members shall be:

22 a. the Chief Medical Examiner,

- 1 b. a designee of the Attorney General. The designee
2 shall be a person assigned to the Victims Services
3 Unit of the Office of the Attorney General,
4 c. the State Commissioner of Health,
5 d. the Director of the Criminal Justice Resource Center,
6 e. the Chief of Injury Prevention Services of the State
7 Department of Health,
8 f. ~~a member of the Oklahoma Council on Violence~~
9 Prevention Director of the Department of Human
10 Services,
11 g. the Director of the Oklahoma State Bureau of
12 Investigation, and
13 h. the Commissioner of the Department of Mental Health
14 and Substance Abuse Services; and

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

- 20 a. a county sheriff selected from a list of three names
21 submitted by the executive board of the Oklahoma
22 Sheriff's Association,

- 1 b. a chief of a municipal police department selected from
2 a list of three names submitted by the Oklahoma
3 Association of Chiefs of Police,
4 c. an attorney licensed in this state who is in private
5 practice selected from a list of three names submitted
6 by the Board of Governors of the Oklahoma Bar
7 Association,
8 d. a district attorney selected from a list of three
9 names submitted by the District Attorneys Council,
10 e. a physician selected from a list of three names
11 submitted by the Oklahoma State Medical Association,
12 f. a physician selected from a list of three names
13 submitted by the Oklahoma Osteopathic Association,
14 g. a nurse selected from a list of three names submitted
15 by the Oklahoma Nurses Association, ~~and~~
16 h. two individuals, at least one of whom shall be a
17 survivor of domestic violence, selected from lists of
18 three names submitted by the Oklahoma Coalition
19 Against Domestic Violence and Sexual Assault, and
20 i. a member of the Judiciary selected from a list of
21 three names submitted by the Oklahoma Supreme Court.

22 B. Every two (2) years the Board shall elect from among its
23 membership a chair and a vice-chair. The Board shall meet at least

1 quarterly and may meet more frequently as necessary as determined by
2 the chair. Members shall serve without compensation but may be
3 reimbursed for necessary travel out of funds available to the
4 Oklahoma Criminal Justice Resource Center pursuant to the State
5 Travel Reimbursement Act; provided, that the reimbursement shall be
6 paid in the case of state employee members by the agency employing
7 the member.

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

12 SECTION 4. AMENDATORY 43 O.S. 2001, Section 107.3, as
13 last amended by Section 20, Chapter 3, O.S.L. 2003 (43 O.S. Supp.
14 2005, Section 107.3), is amended to read as follows:

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

20 2. The guardian ad litem may be appointed to objectively
21 advocate on behalf of the child and act as an officer of the court
22 to investigate all matters concerning the best interests of the
23 child. In addition to other duties required by the court and as

1 specified by the court, a guardian ad litem shall have the following
2 responsibilities:

- 3 a. review documents, reports, records and other
4 information relevant to the case, meet with and
5 observe the child in appropriate settings, and
6 interview parents, caregivers and health care
7 providers and any other person with knowledge relevant
8 to the case including, but not limited to, teachers,
9 counselors and child care providers,
- 10 b. advocate for the ~~child's~~ best interests of the child
11 by participating in the case, attending any hearings
12 in the matter and advocating for appropriate services
13 for the child when necessary,
- 14 c. monitor the ~~child's~~ best interests of the child
15 throughout any judicial proceeding,
- 16 d. present written reports to the parties and court prior
17 to trial or at any other time as specified by the
18 court on the ~~child's~~ best interests of the child that
19 include conclusions and recommendations and the facts
20 upon which they are based, and
- 21 e. the guardian ad litem shall, as much as possible,
22 maintain confidentiality of information related to the

1 case and is not subject to discovery pursuant to the
2 Oklahoma Discovery Code.

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

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

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

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

6 a. the following three conditions are satisfied:

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

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

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

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

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

6 C. As used in this section:

7 1. "Child abuse or neglect" shall have the same meaning as such
8 term is defined by the Oklahoma Child Abuse Reporting and Prevention
9 Act or shall mean the child has been adjudicated deprived as a
10 result of the actions or omission of either parent pursuant to the
11 Oklahoma Children's Code; and

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

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

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

21 2. Consider the false allegations in determining custody; and

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

4 SECTION 5. This act shall become effective November 1, 2006.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-4-06 - DO PASS,
6 As Amended.