

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1927

By: Steele

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to children; amending 10 O.S. 2001,
9 Section 7003-3.7, as amended by Section 3, Chapter
10 205, O.S.L. 2006 (10 O.S. Supp. 2006, Section 7003-
11 3.7), which relates to court-appointed special
12 advocates; specifying requirements for background
13 checks; amending 10 O.S. 2001, Section 7102, as last
14 amended by Section 4, Chapter 258, O.S.L. 2006 (10
15 O.S. Supp. 2006, Section 7102), which relates to
16 abuse or neglect of children; modifying definition;
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-3.7, as
20 amended by Section 3, Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2006,
21 Section 7003-3.7), is amended to read as follows:

22 Section 7003-3.7

23 A. 1. a. If the parents, legal guardian or custodian of the
24 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

1 of parental rights is a possible remedy; provided that
2 the court may appoint counsel without such request, if
3 it deems representation by counsel necessary to
4 protect the interest of the parents, legal guardian or
5 custodian.

6 b. The court shall not be required to appoint an attorney
7 for any person other than for the parents, legal
8 guardian or custodian of the child pursuant to the
9 provisions of this paragraph.

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

21 b. The attorney appointed for the child shall make
22 arrangements to meet with the child as soon as
23 possible after receiving notification of the
24 appointment. Except for good cause shown, the

1 attorney shall meet with the child not less than
2 twenty-four (24) hours prior to any hearing in such
3 proceeding. The attorney may speak with the child
4 over the telephone if a personal visit is not possible
5 due to exigent circumstances. If a meaningful
6 attorney-client relationship between the child and the
7 attorney is prohibited due to age or disability of the
8 child, the attorney shall contact the custodian or
9 caretaker of the child prior to the hearing.

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

22 3. The attorney shall be allowed a reasonable fee for such
23 services as determined by the court, as authorized by law.
24

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

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

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

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

20 a. review documents, reports, records and other
21 information relevant to the case, meet with and
22 observe the child in appropriate settings, and
23 interview parents, foster parents, health care
24

1 providers, child protective services workers and any
2 other person with knowledge relevant to the case,

3 b. advocate for the child's best interests by
4 participating in the case, attending any hearings in
5 the matter and advocating for appropriate services for
6 the child when necessary,

7 c. maintain the confidentiality of information related to
8 a case as required by Article 7 of the Oklahoma
9 Children's Code,

10 d. monitor the child's best interests throughout any
11 judicial proceeding, and

12 e. present written reports on the child's best interests
13 that include conclusions and recommendations and the
14 facts upon which they are based.

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

21 C. 1. Whenever a court-appointed special advocate program is
22 available to the court to serve as a guardian ad litem, priority
23 shall be given to appointment of the court-appointed special
24 advocate to serve as guardian ad litem for the child regardless of

1 whether a guardian ad litem has been requested pursuant to the
2 provisions of this subsection.

3 2. A court-appointed special advocate program shall be made
4 available to each judicial district.

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

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

15 5. No court-appointed special advocate shall be assigned a case
16 before:

- 17 a. completing a training program in compliance with
18 nationally documented court-appointed special advocate
19 standards. Documentation of training shall be
20 submitted annually by local court-appointed special
21 advocate programs to the Oklahoma Court-Appointed
22 Special Advocate Association, and
- 23 b. being approved by the local court-appointed special
24 advocate program, which will include appropriate

1 criminal background checks as provided in paragraph 6
2 of this subsection.

3 6. a. Each local court-appointed special advocate program
4 shall require a criminal history records search
5 conducted by the Oklahoma State Bureau of
6 Investigation, and any other background check
7 requirements as set forth in Oklahoma Court-Appointed
8 Special Advocate Association state standards for local
9 programs, for any person making application to become
10 a court-appointed special advocate volunteer or to be
11 employed by the local court-appointed special advocate
12 Program.

13 b. If the prospective court-appointed special advocate
14 volunteer or employee of the local court-appointed
15 special advocate program has lived in Oklahoma for
16 less than one (1) year, a criminal history records
17 search shall also be obtained from the criminal
18 history state repository of the previous state of
19 residence.

20 c. The criminal history records search conducted by the
21 Oklahoma State Bureau of Investigation provided herein
22 shall be deemed to be for law enforcement purposes as
23 set forth in subsection B of Section 150.9 of Title 74
24 of the Oklahoma Statutes.

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

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

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

16 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7102, as
17 last amended by Section 4, Chapter 258, O.S.L. 2006 (10 O.S. Supp.
18 2006, Section 7102), is amended to read as follows:

19 Section 7102. A. 1. It is the policy of this state to provide
20 for the protection of children who have been abused or neglected and
21 who may be further threatened by the conduct of persons responsible
22 for the health, safety or welfare of such children.

23 2. It is the policy of this state that in responding to a
24 report of child abuse or neglect:

- 1 a. in any necessary removal of a child from the home,
- 2 b. in placements of a child required pursuant to the Oklahoma
3 Child Abuse Reporting and Prevention Act, and
- 4 c. in any administrative or judicial proceeding held pursuant
5 to the provisions of the Oklahoma Child Abuse Reporting and
6 Prevention Act,
7 that the best interests of the child shall be of paramount
8 consideration.

9 B. Except as otherwise provided by and used in the Oklahoma
10 Child Abuse Reporting and Prevention Act:

11 1. "Abuse" means harm or threatened harm to a child's health,
12 safety or welfare by a person responsible for the child's health,
13 safety or welfare, including sexual abuse and sexual exploitation;

14 2. "Harm or threatened harm to a child's health or safety"
15 includes, but is not limited to:

16 a. nonaccidental physical or mental injury,

17 b. sexual abuse,

18 c. sexual exploitation,

19 d. neglect,

20 e. failure or omission to provide protection from harm
21 or threatened harm, or

22 f. abandonment;

23 3. "Neglect" means failure or omission to provide any of the
24 following:

1 a. adequate food, clothing, shelter, medical care, ~~and~~
2 or supervision,

3 b. special care made necessary by the physical or mental
4 condition of the child, or

5 c. abandonment;

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

11 5. "Person responsible for a child's health, safety or welfare"
12 includes a parent; a legal guardian; a custodian; a foster parent; a
13 person eighteen (18) years of age or older with whom the child's
14 parent cohabitates or any other adult residing in the home of the
15 child; an agent or employee of a public or private residential home,
16 institution, facility or day treatment program as defined in Section
17 175.20 of this title; or an owner, operator, or employee of a child
18 care facility as defined by Section 402 of this title;

19 6. "Sexual abuse" includes, but is not limited to, rape, incest
20 and lewd or indecent acts or proposals made to a child, as defined
21 by law, by a person responsible for the child's health, safety or
22 welfare;

23 7. "Sexual exploitation" includes, but is not limited to,
24 allowing, permitting, or encouraging a child to engage in

1 prostitution, as defined by law, by a person responsible for the
2 child's health, safety or welfare or allowing, permitting,
3 encouraging, or engaging in the lewd, obscene, or pornographic
4 photographing, filming, or depicting of a child in those acts as
5 defined by the state law, by a person responsible for the child's
6 health, safety or welfare;

7 8. "Multidisciplinary child abuse team" means any freestanding
8 team established pursuant to the provisions of Section 7110 of this
9 title. For purposes of this definition, "freestanding" means a team
10 not used by a child advocacy center for its accreditation;

11 9. "Child advocacy center" means a center and the
12 multidisciplinary child abuse team of which it is a member that is
13 accredited by the National Children's Alliance and shall be
14 classified, based on the child population of a district attorney's
15 district, as follows:

- 16 a. nonurban centers in districts with child populations
17 that are less than sixty thousand (60,000),
18 b. mid-level nonurban centers in districts with child
19 populations equal to or greater than sixty thousand
20 (60,000), but not including Oklahoma and Tulsa
21 Counties, and
22 c. urban centers in Oklahoma and Tulsa Counties.

23 10. "Assessment" means a systematic process utilized by the
24 Department of Human Services to respond to reports of alleged child

1 abuse or neglect which, according to priority guidelines established
2 by the Department, do not constitute a serious and immediate threat
3 to the child's health, safety or welfare. The assessment includes,
4 but is not limited to, the following elements:

- 5 a. an evaluation of the child's safety, and
- 6 b. a determination regarding the family's need for
7 services;

8 11. "Investigation" means an approach utilized by the
9 Department to respond to reports of alleged child abuse or neglect
10 which, according to priority guidelines established by the
11 Department, constitute a serious and immediate threat to the child's
12 health or safety. An investigation includes, but is not limited to,
13 the following elements:

- 14 a. an evaluation of the child's safety or welfare,
- 15 b. a determination whether or not child abuse or neglect
16 occurred, and
- 17 c. a determination regarding the family's need for
18 prevention and intervention-related services;

19 12. "Services not needed determination" means a report in which
20 a child protective services worker, after an investigation,
21 determines that there is no identified risk of abuse or neglect;

22 13. "Services recommended determination" means a report in
23 which a child protective services worker, after an investigation,
24 determines the allegations to be unfounded or for which there is

1 insufficient evidence to fully determine whether child abuse or
2 neglect has occurred, but one in which the Department determines
3 that the child and the child's family could benefit from receiving
4 prevention and intervention-related services;

5 14. "Confirmed report - services recommended" means a report
6 which is determined by a child protective services worker, after an
7 investigation and based upon some credible evidence, to constitute
8 child abuse or neglect which is of such a nature that the Department
9 recommends prevention and intervention-related services for the
10 parents or persons responsible for the care of the child or
11 children, but for which initial court intervention is not required;

12 15. "Confirmed report - court intervention" means a report
13 which is determined by a child protective services worker, after an
14 investigation and based upon some credible evidence, to constitute
15 child abuse or neglect which is of such a nature that the Department
16 finds that the child's health, safety or welfare is threatened;

17 16. "Child protective services worker" means a person employed
18 by the Department of Human Services with sufficient experience or
19 training as determined by the Department in child abuse prevention
20 and identification;

21 17. "Department" means the Department of Human Services;

22 18. "Commission" means the Commission for Human Services; and

23 19. "Prevention and intervention-related services" means
24 community-based programs that serve children and families on a

1 voluntary and time-limited basis to help reduce the likelihood or
2 incidence of child abuse and neglect.

3 SECTION 3. This act shall become effective November 1, 2007.

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