

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 790

6 By: Leftwich, Adelson, Ballenger,
7 Bass, Burrage, Corn, Crutchfield,
8 Easley, Eason McIntyre, Garrison,
9 Gumm, Ivester, Johnson
10 (Constance), Laster, Lerblance,
11 Paddack, Rice, Riley, Sparks,
12 Sweeden, Wilson and Wyrick of the
13 Senate

14 and

15 Steele of the House

16 COMMITTEE SUBSTITUTE

17 (child abuse and neglect - definition -

18 emergency)

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

20 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-3.7, as
21 last amended by Section 3 of Enrolled House Bill No. 2195 of the 1st
22 Session of the 51st Oklahoma Legislature, is amended to read as
23 follows:

24 Section 7003-3.7

1 A. 1. a. If the parents, legal guardian or custodian of the
2 child requests an attorney and is found to be without
3 sufficient financial means, counsel shall be appointed
4 by the court if a petition has been filed alleging
5 that the child is a deprived child or if termination
6 of parental rights is a possible remedy; provided that
7 the court may appoint counsel without such request, if
8 it deems representation by counsel necessary to
9 protect the interest of the parents, legal guardian or
10 custodian.

11 b. The court shall not be required to appoint an attorney
12 for any person other than for the parents, legal
13 guardian or custodian of the child pursuant to the
14 provisions of this paragraph.

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

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

16 c. The attorney shall be given access to all reports,
17 records and other information relevant to the case and
18 to any reports of examination of the child's parents,
19 legal guardian or custodian made pursuant to this
20 section. The attorney shall represent the child and
21 any expressed interests of the child. The attorney
22 shall make such further inquiry as the attorney deems
23 necessary to ascertain the facts, to interview
24 witnesses, examine and cross-examine witnesses, make

1 recommendations to the court and participate further
2 in the proceedings to the degree appropriate for
3 adequately representing the interests of the child.

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

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

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

14 3. A guardian ad litem shall not be a district attorney, an
15 employee of the office of the district attorney, the child's
16 attorney, an employee of the court, an employee of a juvenile
17 bureau, or an employee of any public agency having duties or
18 responsibilities towards the child.

19 4. The guardian ad litem shall be appointed to objectively
20 advocate on behalf of the child and act as an officer of the court
21 to investigate all matters concerning the best interests of the
22 child. In addition to other duties required by the court and as
23 specified by the court, a guardian ad litem shall have the following
24 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.

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

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

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

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

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

11 5. No court-appointed special advocate shall be assigned a case
12 before:

13 a. completing a training program in compliance with
14 nationally documented Court-Appointed Special Advocate
15 standards. Documentation of training shall be
16 submitted annually by local Court-Appointed Special
17 Advocate Programs to the Oklahoma Court-Appointed
18 Special Advocate Association, and

19 b. being approved by the local Court-Appointed Special
20 Advocate Program, which will include appropriate
21 criminal background checks as provided in paragraph 6
22 of this subsection.

23 6. a. Each local court-appointed special advocate program
24 shall require a criminal history records search

1 conducted by the Oklahoma State Bureau of
2 Investigation, and any other background check
3 requirements as set forth in Oklahoma Court-Appointed
4 Special Advocate Association state standards for local
5 programs, for any person making application to become
6 a court-appointed special advocate volunteer or to be
7 employed by the local court-appointed special advocate
8 program.

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

16 c. The criminal history records search conducted by the
17 Oklahoma State Bureau of Investigation provided
18 herein, subject to the availability of funds, shall be
19 deemed to be for law enforcement purposes as set forth
20 in subsection B of Section 150.9 of Title 74 of the
21 Oklahoma Statutes.

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

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

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

14 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-6.2, as
15 amended by Section 5, Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2006,
16 Section 7003-6.2), is amended to read as follows:

17 Section 7003-6.2 A. Any interested party aggrieved by any
18 order or decree may appeal to the Supreme Court pursuant to Section
19 7003-6.4 of this title and the rules of the Supreme Court of this
20 state.

21 B. The pendency of an appeal thus taken shall not suspend the
22 order of the district court regarding a child, nor shall it remove
23 the child from the custody of that court or of the person,
24 institution or agency to whose care such child has been committed,

1 unless the Supreme Court shall so order, except as provided in
2 subsection C of this section. The pendency of an appeal from an
3 order of adjudication shall not prevent the district court from
4 holding a dispositional hearing unless the appellate court shall so
5 order.

6 C. 1. If the court determines it would be in the best
7 interests of a child, the court may place the child in the legal
8 custody of the Department of Human Services. If the child is placed
9 in the custody of the Department, the court may not direct the
10 Department to place the child in a specific home or placement.

11 2. At any hearing including, but not limited to, hearings
12 conducted pursuant to Section 7003-8.6 of this title, where it is
13 determined that a child in state custody will be released from state
14 custody, the district attorney, or the attorney for the child, ~~or~~
15 ~~the Department of Human Services through the district attorney~~ may
16 give verbal notice to the court of an objection to the order of the
17 court and an intention to seek review of that order based on the
18 grounds that the order of the court releasing the child from state
19 custody creates a serious risk of danger to the health or safety of
20 the child. ~~The party giving notice of its objection to the order of~~
21 ~~the court and its intent to seek review of that order shall file~~
22 ~~with the presiding judge of the administrative judicial district a~~
23 ~~written application to review the order no later than 5:00 p.m. the~~
24 ~~following judicial day; provided, if the district attorney and the~~

1 ~~Department of Human Services disagree regarding the order of the~~
2 ~~court releasing the child from state custody, the written~~
3 ~~application to review the order on behalf of the Department shall be~~
4 ~~filed by the Department.~~

5 3. Upon giving such notice, the court issuing the custody order
6 in question shall stay the custody order filing of an application
7 and completion of review as provided in this section. The district
8 attorney or attorney for the child shall file with the presiding
9 judge of the administrative judicial district a written application
10 for review within three (3) judicial days from the custody order.

11 If a written application for review is not filed ~~by 5:00 p.m. the~~
12 ~~following judicial day~~ within such time period, or if a written
13 notice to the trial court withdrawing the objection is filed within
14 that time period, the objection will be deemed abandoned and the
15 stay shall be lifted.

16 4. Each application for review shall be assigned by the
17 presiding judge of the administrative judicial district to a judge
18 within that administrative judicial district with juvenile docket
19 responsibilities. The review shall be completed within five (5)
20 judicial days of the filing of the written application for review.
21 The review conducted by the reviewing judge shall address the
22 question of whether releasing the child from state custody creates a
23 serious risk of danger to the health or safety of the child. The
24 reviewing court shall review the record of the hearing and any other

1 evidence deemed relevant by the reviewing court. At the conclusion
2 of the review, the reviewing court shall issue its findings of fact
3 and conclusions of law and report them to the court issuing the
4 custody order under review.

5 5. A finding by the reviewing court that the order releasing
6 the child from state custody creates a serious risk of danger to the
7 health or safety of the child shall be controlling and the court
8 issuing the order under review shall proceed to enter a different
9 custody order. If the reviewing court finds that the order under
10 review does not create a serious risk of danger to the health or
11 safety of the child and that the order is otherwise appropriate then
12 the court issuing the order under review shall lift the stay and the
13 order shall be subject to appeal as provided in subsection A of this
14 section. The failure of any court to issue the stay mandated by
15 this subsection shall be subject to immediate mandamus to an
16 appropriate court.

17 SECTION 3. AMENDATORY 10 O.S. 2001, Section 7102, as
18 last amended by Section 4, Chapter 258, O.S.L. 2006 (10 O.S. Supp.
19 2006, Section 7102), is amended to read as follows:

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

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

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

9 ~~that~~ the best interests of the child shall be of paramount
10 consideration.

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

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

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

- 18 a. nonaccidental physical or mental injury,
- 19 b. sexual abuse,
- 20 c. sexual exploitation,
- 21 d. neglect,
- 22 e. failure or omission to provide protection from harm
23 or threatened harm, or
- 24 f. abandonment;

1 3. "Neglect" means failure or omission to provide any of the
2 following:

3 a. adequate food, clothing, shelter, medical care, ~~and~~
4 or supervision,

5 b. special care made necessary by the physical or mental
6 condition of the child, or

7 c. abandonment;

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

13 5. "Person responsible for a child's health, safety or welfare"
14 includes a parent; a legal guardian; a custodian; a foster parent; a
15 person eighteen (18) years of age or older with whom the child's
16 parent cohabitates or any other adult residing in the home of the
17 child; an agent or employee of a public or private residential home,
18 institution, facility or day treatment program as defined in Section
19 175.20 of this title; or an owner, operator, or employee of a child
20 care facility as defined by Section 402 of this title;

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

1 7. "Sexual exploitation" includes, but is not limited to,
2 allowing, permitting, or encouraging a child to engage in
3 prostitution, as defined by law, by a person responsible for the
4 child's health, safety or welfare or allowing, permitting,
5 encouraging, or engaging in the lewd, obscene, or pornographic
6 photographing, filming, or depicting of a child in those acts as
7 defined by the state law, by a person responsible for the child's
8 health, safety or welfare;

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

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

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

1 10. "Assessment" means a systematic process utilized by the
2 Department of Human Services to respond to reports of alleged child
3 abuse or neglect which, according to priority guidelines established
4 by the Department, do not constitute a serious and immediate threat
5 to the child's health, safety or welfare. The assessment includes,
6 but is not limited to, the following elements:

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

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

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

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

1 13. "Services recommended determination" means a report in
2 which a child protective services worker, after an investigation,
3 determines the allegations to be unfounded or for which there is
4 insufficient evidence to fully determine whether child abuse or
5 neglect has occurred, but one in which the Department determines
6 that the child and the child's family could benefit from receiving
7 prevention and intervention-related services;

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

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

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

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

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

2 19. "Prevention and intervention-related services" means
3 community-based programs that serve children and families on a
4 voluntary and time-limited basis to help reduce the likelihood or
5 incidence of child abuse and neglect.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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