

1 ENGROSSED HOUSE
2 BILL NO. 1927

By: Steele, Duncan, Sullivan,
Tibbs, Braddock, Shannon,
Inman, Roan, Kiesel and
Derby of the House

4 and

5 Leftwich and Burrage of the
6 Senate

7
8
9 An Act relating to children; amending 10 O.S. 2001,
10 Section 7003-3.7, as last amended by Section 3 of
11 Enrolled House Bill No. 2195 of the 1st Session of
12 the 51st Oklahoma Legislature, which relates to
13 court-appointed special advocates; specifying
14 requirements for background checks; amending 10 O.S.
2001, Section 7102, as last amended by Section 4,
Chapter 258, O.S.L. 2006 (10 O.S. Supp. 2006, Section
7102), which relates to abuse or neglect of children;
modifying definition; and providing an effective
date.

15
16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

1 in the proceedings to the degree appropriate for
2 adequately representing the interests of the child.

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

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

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

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

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

- 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.

24

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 herein
18 shall be deemed to be for law enforcement purposes as
19 set forth in subsection B of Section 150.9 of Title 74
20 of the Oklahoma Statutes.

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

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

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

12 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7102, as
13 last amended by Section 4, Chapter 258, O.S.L. 2006 (10 O.S. Supp.
14 2006, Section 7102), is amended to read as follows:

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

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

21 a. in any necessary removal of a child from the home,

22 b. in placements of a child required pursuant to the Oklahoma
23 Child Abuse Reporting and Prevention Act, and

24

1 c. in any administrative or judicial proceeding held pursuant
2 to the provisions of the Oklahoma Child Abuse Reporting and
3 Prevention Act,
4 that the best interests of the child shall be of paramount
5 consideration.

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

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

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

13 a. nonaccidental physical or mental injury,

14 b. sexual abuse,

15 c. sexual exploitation,

16 d. neglect,

17 e. failure or omission to provide protection from harm

18 or threatened harm, or

19 f. abandonment;

20 3. "Neglect" means failure or omission to provide any of the
21 following:

22 a. adequate food, clothing, shelter, medical care, ~~and~~

23 or supervision,

24

1 b. special care made necessary by the physical or mental
2 condition of the child, or

3 c. abandonment;

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

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

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

21 7. "Sexual exploitation" includes, but is not limited to,
22 allowing, permitting, or encouraging a child to engage in
23 prostitution, as defined by law, by a person responsible for the
24 child's health, safety or welfare or allowing, permitting,

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

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

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

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

21 10. "Assessment" means a systematic process utilized by the
22 Department of Human Services to respond to reports of alleged child
23 abuse or neglect which, according to priority guidelines established
24 by the Department, do not constitute a serious and immediate threat

1 to the child's health, safety or welfare. The assessment includes,
2 but is not limited to, the following elements:

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

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

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

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

20 13. "Services recommended determination" means a report in
21 which a child protective services worker, after an investigation,
22 determines the allegations to be unfounded or for which there is
23 insufficient evidence to fully determine whether child abuse or
24 neglect has occurred, but one in which the Department determines

1 that the child and the child's family could benefit from receiving
2 prevention and intervention-related services;

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

Passed the House of Representatives the 1st day of March, 2007.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2007.

Presiding Officer of the Senate