CS for HB 1927

THE HOUSE OF REPRESENTATIVES
Monday, February 26, 2007

Committee Substitute for

House Bill No. 1927

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1927 - By: STEELE, DUNCAN, SULLIVAN, TIBBS, BRADDOCK, SHANNON, INMAN, ROAN and KIESEL of the House and LEFTWICH and BURRAGE of the Senate.

An Act relating to children; amending 10 O.S. 2001, Section 7003-3.7, as amended by Section 3, Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2006, Section 7003-3.7), which relates to court-appointed special advocates; specifying 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.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-3.7, as amended by Section 3, Chapter 205, O.S.L. 2006 (10 O.S. Supp. 2006, 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

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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

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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.

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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.

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.

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

a. completing a training program in compliance with nationally documented court-appointed special advocate standards.

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Documentation of training shall be submitted annually by local court-appointed special advocate programs to the Oklahoma Court-Appointed Special Advocate Association, and

b. being approved by the local court-appointed special advocate program, which will include appropriate criminal background checks as provided in paragraph 6 of this subsection.

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

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

c. The criminal history records search conducted by the Oklahoma State Bureau of Investigation provided herein shall be deemed to be for law

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enforcement purposes as set forth in subsection B of Section 150.9 of Title 74 of the Oklahoma Statutes.

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 7102, as last amended by Section 4, Chapter 258, O.S.L. 2006 (10 O.S. Supp. 2006, Section 7102), is amended to read as follows:

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

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

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

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

c. in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act,

that the best interests of the child shall be of paramount consideration.

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

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

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

a. nonaccidental physical or mental injury,

b. sexual abuse,

c. sexual exploitation,

d. neglect,

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

f. abandonment;

3. "Neglect" means failure or omission to provide <u>any of the following</u>:

a. adequate food, clothing, shelter, medical care, ~~and~~ <u>or</u> supervision,

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

c. abandonment;

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

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

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

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

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

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

a. nonurban centers in districts with child populations that are less than sixty thousand (60,000),

b. mid-level nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa Counties, and

c. urban centers in Oklahoma and Tulsa Counties.

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

a. an evaluation of the child's safety, and

b. a determination regarding the family's need for services;

11. “Investigation” means an approach utilized by the Department to respond to reports of alleged child abuse or neglect which, according to priority guidelines

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established by the Department, constitute a serious and immediate threat to the child's health or safety. An investigation includes, but is not limited to, the following elements:

a. an evaluation of the child's safety or welfare,

b. a determination whether or not child abuse or neglect occurred, and

c. a determination regarding the family's need for prevention and intervention-related services;

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

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

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

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

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

17. “Department” means the Department of Human Services;

18. “Commission” means the Commission for Human Services; and

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

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

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY, dated 02-22-07 - DO PASS, As Amended and Coauthored.

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