

THE HOUSE OF REPRESENTATIVES  
Monday, April 16, 2007

Committee Substitute for  
ENGROSSED  
Senate Bill No. 790

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 790 - By:  
LEFTWICH, ADELSON, BALLENGER, BASS, BURRAGE, CORN, CRUTCHFIELD,  
EASLEY, EASON MCINTYRE, GARRISON, GUMM, IVESTER, JOHNSON  
(CONSTANCE), LASTER, LERBLANCE, PADDACK, RICE, RILEY, SPARKS,  
SWEEDEN, WILSON AND WYRICK of the Senate and STEELE, PITTMAN,  
MCDANIEL (JEANNIE), MCDANIEL (RANDY), PETERSON (PAM) AND KERN of the  
House.

( child abuse and neglect – definition –  
emergency )

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

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

4 Section 7003-3.7

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

1 such request, if it deems representation by counsel necessary to protect  
2 the interest of the parents, legal guardian or custodian.

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

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

14 b. The attorney appointed for the child shall make arrangements to meet  
15 with the child as soon as possible after receiving notification of the  
16 appointment. Except for good cause shown, the attorney shall meet  
17 with the child not less than twenty-four (24) hours prior to any hearing  
18 in such proceeding. The attorney may speak with the child over the  
19 telephone if a personal visit is not possible due to exigent  
20 circumstances. If a meaningful attorney-client relationship between  
21 the child and the attorney is prohibited due to age or disability of the

1 child, the attorney shall contact the custodian or caretaker of the child  
2 prior to the hearing.

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

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

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

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

21 3. A guardian ad litem shall not be a district attorney, an employee of the office of  
22 the district attorney, the child's attorney, an employee of the court, an employee of a

1 juvenile bureau, or an employee of any public agency having duties or responsibilities  
2 towards the child.

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

- 7 a. review documents, reports, records and other information relevant to  
8 the case, meet with and observe the child in appropriate settings, and  
9 interview parents, foster parents, health care providers, child  
10 protective services workers and any other person with knowledge  
11 relevant to the case,
- 12 b. advocate for the child's best interests by participating in the case,  
13 attending any hearings in the matter and advocating for appropriate  
14 services for the child when necessary,
- 15 c. maintain the confidentiality of information related to a case as  
16 required by Article 7 of the Oklahoma Children's Code,
- 17 d. monitor the child's best interests throughout any judicial proceeding,  
18 and
- 19 e. present written reports on the child's best interests that include  
20 conclusions and recommendations and the facts upon which they are  
21 based.

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

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

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

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

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

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

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

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

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

19          6. a. Each local court-appointed special advocate program shall require a  
20                criminal history records search conducted by the Oklahoma State  
21                Bureau of Investigation, and any other background check  
22                requirements as set forth in Oklahoma Court-Appointed Special

1 Advocate Association state standards for local programs, for any  
2 person making application to become a court-appointed special  
3 advocate volunteer or to be employed by the local court-appointed  
4 special advocate program.

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

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

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

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

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

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

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

10 B. The pendency of an appeal thus taken shall not suspend the order of the district  
11 court regarding a child, nor shall it remove the child from the custody of that court or of  
12 the person, institution or agency to whose care such child has been committed, unless the  
13 Supreme Court shall so order, except as provided in subsection C of this section. The  
14 pendency of an appeal from an order of adjudication shall not prevent the district court  
15 from holding a dispositional hearing unless the appellate court shall so order.

16 C. 1. If the court determines it would be in the best interests of a child, the court  
17 may place the child in the legal custody of the Department of Human Services. If the  
18 child is placed in the custody of the Department, the court may not direct the  
19 Department to place the child in a specific home or placement.

20 2. At any hearing including, but not limited to, hearings conducted pursuant to  
21 Section 7003-8.6 of this title, where it is determined that a child in state custody will be  
22 released from state custody, the district attorney, or the attorney for the child, ~~or the~~

1 Department of Human Services through the district attorney may give verbal notice to  
2 the court of an objection to the order of the court and an intention to seek review of that  
3 order based on the grounds that the order of the court releasing the child from state  
4 custody creates a serious risk of danger to the health or safety of the child. ~~The party~~  
5 ~~giving notice of its objection to the order of the court and its intent to seek review of that~~  
6 ~~order shall file with the presiding judge of the administrative judicial district a written~~  
7 ~~application to review the order no later than 5:00 p.m. the following judicial day;~~  
8 ~~provided, if the district attorney and the Department of Human Services disagree~~  
9 ~~regarding the order of the court releasing the child from state custody, the written~~  
10 ~~application to review the order on behalf of the Department shall be filed by the~~  
11 ~~Department.~~

12 3. Upon giving such notice, the court issuing the custody order in question shall  
13 stay the custody order filing of an application and completion of review as provided in  
14 this section. The district attorney or attorney for the child shall file with the presiding  
15 judge of the administrative judicial district a written application for review within three  
16 (3) judicial days from the custody order. If a written application for review is not filed ~~by~~  
17 ~~5:00 p.m. the following judicial day~~ within such time period, or if a written notice to the  
18 trial court withdrawing the objection is filed within that time period, the objection will be  
19 deemed abandoned and the stay shall be lifted.

20 4. Each application for review shall be assigned by the presiding judge of the  
21 administrative judicial district to a judge within that administrative judicial district with  
22 juvenile docket responsibilities. The review shall be completed within five (5) judicial

1 days of the filing of the written application for review. The review conducted by the  
2 reviewing judge shall address the question of whether releasing the child from state  
3 custody creates a serious risk of danger to the health or safety of the child. The  
4 reviewing court shall review the record of the hearing and any other evidence deemed  
5 relevant by the reviewing court. At the conclusion of the review, the reviewing court  
6 shall issue its findings of fact and conclusions of law and report them to the court issuing  
7 the custody order under review.

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

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

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

1           2. It is the policy of this state that in responding to a report of child abuse or  
2 neglect:  
3           a.     in any necessary removal of a child from the home,  
4           b.     in placements of a child required pursuant to the Oklahoma Child  
5 Abuse Reporting and Prevention Act, and  
6           c.     in any administrative or judicial proceeding held pursuant to the  
7 provisions of the Oklahoma Child Abuse Reporting and Prevention Act,  
8 ~~that~~ the best interests of the child shall be of paramount consideration.

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

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

14           2. "Harm or threatened harm to a child's health or safety" includes, but is not  
15 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 or threatened  
21 harm, or
- 22           f.     abandonment;

1           3. “Neglect” means failure or omission to provide any of the following:

- 2           a.     adequate food, clothing, shelter, medical care, ~~and~~ or supervision,  
3           b.     special care made necessary by the physical or mental condition of  
4           the child, or  
5           c.     abandonment;

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

10          5. “Person responsible for a child's health, safety or welfare” includes a parent; a  
11 legal guardian; a custodian; a foster parent; a person eighteen (18) years of age or older  
12 with whom the child's 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, institution, facility or  
14 day treatment program as defined in Section 175.20 of this title; or an owner, operator, or  
15 employee of a child care facility as defined by Section 402 of this title;

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

19          7. “Sexual exploitation” includes, but is not limited to, allowing, permitting, or  
20 encouraging a child to engage in prostitution, as defined by law, by a person responsible  
21 for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging  
22 in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in

1 those acts as defined by the state law, by a person responsible for the child's health,  
2 safety or welfare;

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

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

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

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

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

1           11. “Investigation” means an approach utilized by the Department to respond to  
2 reports of alleged child abuse or neglect which, according to priority guidelines  
3 established by the Department, constitute a serious and immediate threat to the child's  
4 health or safety. An investigation includes, but is not limited to, the following elements:  
5           a.       an evaluation of the child's safety or welfare,  
6           b.       a determination whether or not child abuse or neglect occurred, and  
7           c.       a determination regarding the family's need for prevention and  
8                   intervention-related services;

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

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

18           14. “Confirmed report - services recommended” means a report which is determined  
19 by a child protective services worker, after an investigation and based upon some  
20 credible evidence, to constitute child abuse or neglect which is of such a nature that the  
21 Department recommends prevention and intervention-related services for the parents or

1 persons responsible for the care of the child or children, but for which initial court  
2 intervention is not required;

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

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

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

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 04-12-07 -  
19 DO PASS, As Amended and Coauthored.