

1 ENGROSSED HOUSE
2 BILL NO. 1360

By: Peters, Tibbs and Kern of
the House

3 and

4 Jolley of the Senate
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8 An Act relating to children and juvenile code;
9 amending 10 O.S. 2001, Section 7003-3.7, as last
10 amended by Section 26, Chapter 233, O.S.L. 2009, and
11 as renumbered by Section 234, Chapter 233, O.S.L.
12 2009 (10A O.S. Supp. 2010, Section 1-4-306), which
13 relates to appointment of counsel or guardian ad
14 litem; providing guidelines and criteria when
15 representing certain children; declaring role of
16 child in deprived proceedings; and providing an
17 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 last amended by Section 26, Chapter 233, O.S.L. 2009, and as
21 renumbered by Section 234, Chapter 233, O.S.L. 2009 (10A O.S. Supp.
22 2010, Section 1-4-306), is amended to read as follows:

23 Section 1-4-306. A. 1. a. If a parent or legal guardian of
24 the child requests an attorney and is found to be
indigent, counsel may be appointed by the court at the
emergency custody hearing and shall be appointed if a
petition has been filed alleging that the child is a

1 deprived child; provided, that the court may appoint
2 counsel without such request, if it deems
3 representation by counsel necessary to protect the
4 interest of the parent, legal guardian, or custodian.

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

9 2. a. The court may appoint an attorney or a guardian ad
10 litem for the child when an emergency custody hearing
11 is held; provided, that when a petition is filed
12 alleging the child to be deprived, the court shall
13 appoint a separate attorney for the child, who shall
14 not be a district attorney, regardless of any
15 attempted waiver by the parent, legal guardian or
16 custodian of the child of the right of the child to be
17 represented by counsel. The child's attorney shall be
18 independent of and not selected by the district
19 attorney, the child's parent, legal guardian, or
20 custodian. If financially capable, the parent, legal
21 guardian or custodian shall reimburse the Court Fund
22 for the services of a court-appointed attorney for the
23 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 prior to any
6 hearing in such proceeding. The attorney may speak
7 with the child over the telephone if a personal visit
8 is not possible due to exigent circumstances. If a
9 meaningful attorney-client relationship between the
10 child and the attorney is prohibited due to age or
11 disability of the child, the attorney shall contact
12 the custodian or caretaker of the child prior to the
13 hearing.

14 c. The attorney shall represent the child and any
15 expressed interests of the child. To the extent that
16 a child is unable to express an interest, either
17 because the child is preverbal, very young or for any
18 reason is incapable of judgment and meaningful
19 communication, the attorney shall substitute his or
20 her judgment for that of the child and formulate and
21 present a position which serves the best interests of
22 the child. Such formulation must be accomplished
23 through the use of objective criteria rather than
24 solely the life experience or instinct of the

1 attorney. The objective criteria shall include, but
2 not be limited to:

- 3 (1) a determination of the circumstances of the
4 child through a full and efficient
5 investigation,
- 6 (2) assessment of the child at the moment of
7 the determination,
- 8 (3) examination of all options in light of the
9 permanency plans available to the child,
10 and
- 11 (4) utilization of medical, mental health and
12 educational professionals, social workers
13 and other related experts.

14 The attorney shall make such further inquiry as the
15 attorney deems necessary to ascertain the facts, to
16 interview witnesses, examine and cross-examine
17 witnesses, make recommendations to the court and
18 participate further in the proceedings to the degree
19 appropriate for adequately representing the interests
20 of the child. A child is a party to all deprived
21 proceedings and is therefore able to participate as
22 fully as the parents and the district attorney in all
23 aspects of the proceedings including, but not limited
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1 to, voir dire, cross examination, the subpoena of
2 witnesses, and opening and closing statements.

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

5 4. When an attorney is required to travel to more than one
6 district court location in order to represent a child or children
7 whom the attorney has been court-appointed to represent, the court
8 may in its discretion allow the attorney a reasonable reimbursement
9 for mileage.

10 5. The court shall ensure that the child is represented by
11 independent counsel throughout the pendency of the deprived action.

12 B. 1. After a petition is filed, the court shall appoint a
13 guardian ad litem upon the request of the child or the attorney of
14 the child, and may appoint a guardian ad litem sua sponte or upon
15 the request of the Department of Human Services, a licensed child-
16 placing agency, or another party to the action.

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

22 3. The guardian ad litem shall be appointed to objectively
23 advocate on behalf of the child and act as an officer of the court
24 to investigate all matters concerning the best interests of the

1 child. In addition to other duties required by the court and as
2 specified by the court, a guardian ad litem shall have the following
3 responsibilities:

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

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

1 5. On or before December 31, 2009, 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 may
18 be given to appointment of the court-appointed special advocate to
19 serve as guardian ad litem for the child regardless of whether a
20 guardian ad litem has been requested pursuant to the provisions of
21 this subsection.

22 2. For purposes of the Oklahoma Children's Code, a "court-
23 appointed special advocate" and a "guardian ad litem" shall have the
24 same function except as otherwise provided by law. In like manner,

