

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 HOUSE BILL 1360

 By: Peters and Tibbs

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7 AS INTRODUCED

8 An Act relating to children and juvenile code;
9 amending Section 116, Chapter 233, O.S.L. 2009 (10A
10 O.S. Supp. 2010, Section 1-4-206), which relates to
11 restraining orders; clarifying procedures for issuing
12 protective orders; authorizing court to issue final
13 protective orders pursuant to the Protection from
14 Domestic Abuse Act; deleting procedures for the
15 issuance of restraining orders; providing for the
16 confidentiality of protective orders; prohibiting
17 disclosure of protective orders; providing
18 exceptions; directing court clerk to send certified
19 copies of certain documents to law enforcement;
20 providing penalties for violating protective orders;
21 authorizing court to assess certain costs and fees;
22 amending 10 O.S. 2001, Section 7003-3.7, as last
23 amended by Section 26, Chapter 233, O.S.L. 2009, and
24 as renumbered by Section 234, Chapter 233, O.S.L.
 2009 (10A O.S. Supp. 2010, Section 1-4-306), which
 relates to appointment of counsel or guardian ad
 litem; providing guidelines and criteria when
 representing certain children; declaring role of
 child in deprived proceedings; and providing an
 effective date.

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

1 SECTION 1. AMENDATORY Section 116, Chapter 233, O.S.L.
2 2009 (10A O.S. Supp. 2010, Section 1-4-206), is amended to read as
3 follows:

4 Section 1-4-206. A. 1. At the emergency custody hearing or
5 ~~when~~ after a petition has been filed alleging that a child has been
6 physically or sexually abused or neglected and upon consideration of
7 the safety of the child brought into state custody and to ensure the
8 safety of the child, the court may enter against the alleged
9 perpetrator of abuse or neglect an emergency protective order
10 ~~restraining the alleged perpetrator of the abuse from having contact~~
11 ~~with the child or attempting to contact the child and requiring the~~
12 ~~alleged perpetrator to move from the household in which the child~~
13 ~~resides. The court may issue a restraining order only if the court~~
14 ~~finds that:~~

- 15 a. ~~there is a reasonable suspicion that abuse occurred~~
- 16 ~~and that the person to be restrained committed the~~
- 17 ~~abuse, and~~
- 18 b. ~~the order is in the best interest of the child.~~

19 2. ~~The court may also enter other appropriate orders including,~~
20 ~~but not limited to, orders that control contact between the alleged~~
21 ~~abuser, other children in the home, and any other person.~~

22 3. ~~The court shall include in an order entered under this~~
23 ~~subsection the following information about the person to be~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~restrained to the extent known by the court at the time the order is~~
2 ~~entered:~~

- 3 a. ~~name,~~
- 4 b. ~~address,~~
- 5 c. ~~age and birth date,~~
- 6 d. ~~race,~~
- 7 e. ~~sex,~~
- 8 f. ~~height and weight,~~
- 9 g. ~~color of hair and eyes, and~~
- 10 h. ~~any other identifying features such as tattoos.~~

11 4. ~~The court may include in the order a provision that a peace~~
12 ~~officer accompany the restrained person to the household when it is~~
13 ~~necessary for the restrained person to remove personal property~~
14 pursuant to the provisions of the Protection from Domestic Abuse
15 Act. If the defendant is present, the court may issue a final
16 protective order pursuant to the Protection from Domestic Abuse Act.
17 The court may also issue a final order restraining the alleged
18 perpetrator from any activity or action from which the person may be
19 restrained under the provisions of the Protection from Domestic
20 Abuse Act. The final protective order shall remain in effect until
21 the case is dismissed or until further order of the court.

22 B. ~~If the court enters an order under this section:~~

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1 ~~1. The clerk of the court shall provide without charge the~~
2 ~~number of certified true copies of the order and petition, if~~
3 ~~available, necessary to effect service and shall deliver the same to~~
4 ~~the sheriff or other person qualified to serve the order for service~~
5 ~~upon the person to be restrained; and~~

6 ~~2. The sheriff or other person qualified to serve the order~~
7 ~~shall serve the person to be restrained personally unless that~~
8 ~~person is present at the hearing. After accepting the order, if the~~
9 ~~sheriff or other person cannot complete service within ten (10)~~
10 ~~days, the sheriff or other person shall file a return to the clerk~~
11 ~~of the court showing that service was not completed and the reason~~
12 ~~for the noncompletion~~

All protective orders issued by the court
13 having jurisdiction over juvenile cases shall remain confidential
14 and shall not be open to the general public, inspected or their
15 contents disclosed; provided, the court clerk of the issuing court
16 shall send certified copies to all appropriate law enforcement
17 agencies designated by the court and shall ensure that law
18 enforcement agencies have access twenty-four (24) hours a day to the
19 information contained in the order which may include entry of
20 information about the protective order in the National Crime
21 Information Center Database. A certified copy of any extension,
22 modification, vacation, cancellation, or consent agreement
23 concerning the protective order shall be sent by the clerk of the

1 issuing court to those law enforcement agencies receiving the
2 original orders pursuant to this section and to any law enforcement
3 agencies designated by the court.

4 C. ~~Within thirty (30) days after an order is served under this~~
5 ~~section, the restrained person may file a written request with the~~
6 ~~court and receive a court hearing on any portion of the order. If~~
7 ~~the restrained person requests a hearing under this subsection:~~

8 1. ~~The court shall notify the parties and the restrained person~~
9 ~~of the date and time of the hearing; and~~

10 2. ~~The court shall hold a hearing within twenty one (21) days~~
11 ~~after the request for hearing is filed with the court and at the~~
12 ~~conclusion of the hearing may cancel or modify the order Penalties~~
13 ~~for a violation of an order of protection shall be the same as those~~
14 ~~penalties provided for in the Protection from Domestic Abuse Act.~~

15 D. 1. ~~Within twenty four (24) hours of the return of service~~
16 ~~of the restraining order, the clerk of the issuing court shall send~~
17 ~~certified copies thereof to all appropriate law enforcement agencies~~
18 ~~designated by the court. A certified copy of any extension,~~
19 ~~modification, vacation, cancellation, or consent agreement~~
20 ~~concerning the restraining order shall be sent by the clerk of the~~
21 ~~issuing court to those law enforcement agencies receiving the~~
22 ~~original orders pursuant to this section and to any law enforcement~~
23 ~~agencies designated by the court.~~

1 ~~2. Any law enforcement agency receiving copies of the documents~~
2 ~~listed in paragraph 1 of this subsection shall be required to ensure~~
3 ~~that other law enforcement agencies have access twenty-four (24)~~
4 ~~hours a day to the information contained in the documents which may~~
5 ~~include entry of information about the restraining order in the~~
6 ~~National Crime Information Center database.~~

7 ~~E. A restraining order issued pursuant to this section remains~~
8 ~~in effect for a period of one (1) year or until the order is sooner~~
9 ~~modified, amended, or terminated by court order.~~

10 ~~F. A court that issued a restraining order under this section~~
11 ~~may renew the order for a period of up to one (1) year if the court~~
12 ~~finds that there is probable cause to believe the renewal is in the~~
13 ~~best interest of the child. The court may renew the order on motion~~
14 ~~by the state or the child's attorney alleging facts supporting the~~
15 ~~required finding. If the renewal order is granted, subsections B~~
16 ~~and C of this section apply.~~

17 ~~G. If a restraining order issued pursuant to this section is~~
18 ~~terminated before its expiration date, the clerk of the court shall~~
19 ~~promptly deliver a true copy of the termination order to the~~
20 ~~sheriff. The sheriff shall promptly remove the original order from~~
21 ~~the National Crime Information Center database.~~

22 ~~H. Any person who has been served with the restraining order~~
23 ~~and is in violation of the restraining order, upon conviction, shall~~

1 ~~be guilty of a misdemeanor and shall be punished by a fine of not~~
2 ~~more than One Thousand Dollars (\$1,000.00) or by a term of~~
3 ~~imprisonment in the county jail of not more than one (1) year, or~~
4 ~~both such fine and imprisonment~~ The court may assess court costs,
5 service of process fees, attorney fees and filing fees to the
6 defendant at the hearing if a protective order is granted against
7 the defendant.

8 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-3.7, as
9 last amended by Section 26, Chapter 233, O.S.L. 2009, and as
10 renumbered by Section 234, Chapter 233, O.S.L. 2009 (10A O.S. Supp.
11 2010, Section 1-4-306), is amended to read as follows:

12 Section 1-4-306. A. 1. a. If a parent or legal guardian of
13 the child requests an attorney and is found to be
14 indigent, counsel may be appointed by the court at the
15 emergency custody hearing and shall be appointed if a
16 petition has been filed alleging that the child is a
17 deprived child; provided, that the court may appoint
18 counsel without such request, if it deems
19 representation by counsel necessary to protect the
20 interest of the parent, legal guardian, or custodian.

21 b. The court shall not be required to appoint an attorney
22 for any person other than a parent, or legal guardian
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1 of the child pursuant to the provisions of this
2 paragraph.

3 2. a. The court may appoint an attorney or a guardian ad
4 litem for the child when an emergency custody hearing
5 is held; provided, that when a petition is filed
6 alleging the child to be deprived, the court shall
7 appoint a separate attorney for the child, who shall
8 not be a district attorney, regardless of any
9 attempted waiver by the parent, legal guardian or
10 custodian of the child of the right of the child to be
11 represented by counsel. The child's attorney shall be
12 independent of and not selected by the district
13 attorney, the child's parent, legal guardian, or
14 custodian. If financially capable, the parent, legal
15 guardian or custodian shall reimburse the Court Fund
16 for the services of a court-appointed attorney for the
17 child.

18 b. The attorney appointed for the child shall make
19 arrangements to meet with the child as soon as
20 possible after receiving notification of the
21 appointment. Except for good cause shown, the
22 attorney shall meet with the child prior to any
23 hearing in such proceeding. The attorney may speak

1 with the child over the telephone if a personal visit
2 is not possible due to exigent circumstances. If a
3 meaningful attorney-client relationship between the
4 child and the attorney is prohibited due to age or
5 disability of the child, the attorney shall contact
6 the custodian or caretaker of the child prior to the
7 hearing.

8 c. The attorney shall represent the child and any
9 expressed interests of the child. To the extent that
10 a child is unable to express an interest, either
11 because the child is preverbal, very young or for any
12 reason is incapable of judgment and meaningful
13 communication, the attorney shall substitute his or
14 her judgment for that of the child and formulate and
15 present a position which serves the best interests of
16 the child. Such formulation must be accomplished
17 through the use of objective criteria rather than
18 solely the life experience or instinct of the
19 attorney. The objective criteria shall include, but
20 not be limited to:

- 21 (1) a determination of the circumstances of the
22 child through a full and efficient
23 investigation,

- 1 (2) assessment of the child at the moment of
2 the determination,
3 (3) examination of all options in light of the
4 permanency plans available to the child,
5 and
6 (4) utilization of medical, mental health and
7 educational professionals, social workers
8 and other related experts.

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

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

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

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

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

13 2. 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 3. 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:

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

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

22 5. On or before December 31, 2009, the Administrative Director
23 of the Courts shall develop a standard operating manual for
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1 guardians ad litem which shall include, but not be limited to, legal
2 obligations and responsibilities, information concerning child
3 abuse, child development, domestic abuse, sexual abuse, and parent
4 and child behavioral health and management including best practices.
5 After publication of the manual, all guardians ad litem shall
6 certify to the court in which he or she is appointed as a guardian
7 ad litem that the manual has been read and all provisions contained
8 therein are understood. The guardian ad litem shall also certify
9 that he or she agrees to follow the best practices described within
10 the standard operating manual. The Administrative Director of the
11 Courts shall provide public access to the standard operating manual
12 and shall periodically review and revise the manual as deemed
13 necessary.

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

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

5 3. A court-appointed special advocate shall serve without
6 compensation.

7 SECTION 3. This act shall become effective November 1, 2011.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-15-2011 - DO
9 PASS, As Coauthored.

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