

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 180 By: Griffin of the Senate
3 and
4 Newell of the House
5

6 An Act relating to court-appointed special advocates;
7 amending 10A O.S. 2011, Section 1-8-102, which
8 relates to education, training, and qualifications of
9 advocates; requiring Department of Human Services
10 child welfare records search for applicants;
11 providing definition; and providing an effective
12 date.

11 AUTHOR: Add the following Senate Coauthor: Pittman

12 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
13 and insert

14
15 "An Act relating to guardians ad litem; amending 10A
16 O.S. 2011, Section 1-4-306, which relates to
17 guardians ad litem and court-appointed special
18 advocates; clarifying guardian ad litem
19 responsibility; and providing an effective date.

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

20 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-306, is
21 amended to read as follows:

22 Section 1-4-306.

23 A. 1. a. If a parent or legal guardian of the child requests an
24 attorney and is found to be indigent, counsel may be

1 appointed by the court at the emergency custody
2 hearing and shall be appointed if a petition has been
3 filed alleging that the child is a deprived child;
4 provided, that the court may appoint counsel without
5 such request, if it deems representation by counsel
6 necessary to protect the interest of the parent, legal
7 guardian, or custodian.

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

12 2. a. The court may appoint an attorney or a guardian ad
13 litem for the child when an emergency custody hearing
14 is held; provided, that when a petition is filed
15 alleging the child to be deprived, the court shall
16 appoint a separate attorney for the child, who shall
17 not be a district attorney, regardless of any
18 attempted waiver by the parent, legal guardian or
19 custodian of the child of the right of the child to be
20 represented by counsel. The child's attorney shall be
21 independent of and not selected by the district
22 attorney, the child's parent, legal guardian, or
23 custodian. If financially capable, the parent, legal
24 guardian or custodian shall reimburse the Court Fund

1 for the services of a court-appointed attorney for the
2 child.

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

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

1 through the use of objective criteria rather than
2 solely the life experience or instinct of the
3 attorney. The objective criteria shall include, but
4 not be limited to:

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

16 The attorney shall make such further inquiry as the
17 attorney deems necessary to ascertain the facts, to
18 interview witnesses, examine and cross-examine
19 witnesses, make recommendations to the court and
20 participate further in the proceedings to the degree
21 appropriate for adequately representing the interests
22 of the child. A child is a party to all deprived
23 proceedings and is therefore able to participate as
24 fully as the parents and the district attorney in all

1 aspects of the proceedings including, but not limited
2 to, voir dire, cross examination, the subpoena of
3 witnesses, and opening and closing statements.

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

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

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

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

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

23 3. The guardian ad litem shall be appointed to objectively
24 advocate on behalf of the child and act as an officer of the court

1 to investigate all matters concerning the best interests of the
2 child. In addition to other duties required by the court and as
3 specified by the court, a guardian ad litem shall have the following
4 responsibilities:

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

21 4. The guardian ad litem shall be given access to the court
22 files and agency files and access to all documents, reports, records
23 and other information relevant to the case and to any records and
24 reports of examination of the child's parent or other custodian,

1 made pursuant to the laws relating to child abuse and neglect
2 including reports generated by service providers.

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

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

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

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

11 SECTION 2. This act shall become effective November 1, 2015."

12 Passed the House of Representatives the 23rd day of March, 2015.

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2015.

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Presiding Officer of the Senate

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1 ENGROSSED SENATE
2 BILL NO. 180

By: Griffin of the Senate

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4 Newell of the House

5 An Act relating to court-appointed special advocates;
6 amending 10A O.S. 2011, Section 1-8-102, which
7 relates to education, training, and qualifications of
8 advocates; requiring Department of Human Services
9 child welfare records search for applicants;
10 providing definition; and providing an effective
11 date.

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

13 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-8-102, is
14 amended to read as follows:

15 Section 1-8-102. A. Any court-appointed special advocate
16 (CASA) available for appointment pursuant to the Oklahoma Children's
17 Code or the Oklahoma Juvenile Code shall complete education and
18 training courses in juvenile law, child abuse and neglect and other
19 issues relating to children such as foster care and parental
20 divorce, including, but not limited to, risk factors which may
21 identify domestic abuse and potential violence and the relationship
22 between alcohol or drug abuse and violence, safe visitation and
23 supervised visitation arrangements and standards for a child and
24 parties. The chief judge of the judicial district for which a
court-appointed special advocate serves shall be responsible for
developing and administering procedures and rules for such courses.

1 B. No court-appointed special advocate shall be assigned a case
2 before:

3 1. Completing a training program in compliance with nationally
4 documented Court-Appointed Special Advocate standards.

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

8 2. Being approved by the local court-appointed special advocate
9 program, which will include appropriate criminal background checks
10 as provided in subsection C of this section.

11 C. 1. Each local court-appointed special advocate program
12 shall require a child welfare records search conducted by the
13 Department of Human Services, a criminal history records search
14 conducted by the Oklahoma State Bureau of Investigation, and any
15 other background check requirements as set forth in Oklahoma Court-
16 Appointed Special Advocate Association state standards for local
17 programs, for any person making application to become a court-
18 appointed special advocate volunteer or to be employed by the local
19 court-appointed special advocate program. For the purposes of this
20 section, "child welfare records search" means a report of all
21 substantiated findings of child abuse or neglect.

22 2. If the prospective court-appointed special advocate
23 volunteer or employee of the local court-appointed special advocate
24 program has lived in Oklahoma for less than one (1) year, a criminal

1 history records search shall also be obtained from the criminal
2 history state repository of the previous state of residence.

3 3. The Oklahoma Court-Appointed Special Advocate Association
4 shall pay the fee for the criminal history records search provided
5 in this subsection.

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

10 2. Any person serving in a management position of a court-
11 appointed special advocate organization, including a member of the
12 Board of Directors acting in good faith, shall be immune from any
13 civil liability or any vicarious liability for the negligence of any
14 court-appointed special advocate organization advocates, managers,
15 or directors.

16 SECTION 2. This act shall become effective November 1, 2015.

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