

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 HOUSE BILL 3467

By: Lawson of the House

5 and

6 **Rosino** of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to children; amending 10A O.S. 2021,
11 Section 1-4-306, which relates to appointment of
12 counsel; permitting court to provide reimbursement
 for mileage in certain circumstances; and providing
 an effective date.

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

16 SECTION 1. AMENDATORY 10A O.S. 2021, Section 1-4-306, is
17 amended to read as follows:

18 Section 1-4-306.

19 A. 1. a. If a parent or legal guardian of the child requests an
20 attorney and is found to be indigent, counsel may be
21 appointed by the court at the emergency custody
22 hearing and shall be appointed if a petition has been
23 filed alleging that the child is a deprived child;
24 provided, that the court may appoint counsel without

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

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

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

23 b. The attorney appointed for the child shall make
24 arrangements to meet with the child as soon as

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

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

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

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.

A child is a party to all deprived proceedings and is therefore able to participate as fully as the parents and the district attorney in all aspects of the proceedings including, but not limited to, voir dire, cross-examination, the subpoena of witnesses, and opening and closing statements.

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

4. When an attorney is required to travel to more than one district court location in order to represent a parent, a child, or children whom the attorney has been court-appointed to represent,

1 the court may in its discretion allow the attorney a reasonable
2 reimbursement for mileage.

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

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

10 2. A guardian ad litem shall not be a district attorney, an
11 employee of the office of the district attorney, the child's
12 attorney, an employee of the court, an employee of a juvenile
13 bureau, or an employee of any public agency having duties or
14 responsibilities towards the child.

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

- 21 a. review documents, reports, records and other
22 information relevant to the case, meet with and
23 observe the child in appropriate settings, including
24 the child's current placement, and interview parents,

1 foster parents, health care providers, child
2 protective services workers and any other person with
3 knowledge relevant to the case,

- 4 b. advocate for the best interests of the child by
5 participating in the case, attending any hearings in
6 the matter and advocating for appropriate services for
7 the child when necessary,
- 8 c. monitor the best interests of the child throughout any
9 judicial proceeding, and
- 10 d. present written reports on the best interests of the
11 child that include conclusions and recommendations and
12 the facts upon which they are based.

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

19 5. The Oklahoma Bar Association shall develop a standard
20 operating manual for guardians ad litem which shall include, but not
21 be limited to, legal obligations and responsibilities, information
22 concerning child abuse, child development, domestic abuse, sexual
23 abuse, and parent and child behavioral health and management
24 including best practices. After publication of the manual, all

1 guardians ad litem shall certify to the court in which he or she is
2 appointed as a guardian ad litem that the manual has been read and
3 all provisions contained therein are understood. The guardian ad
4 litem shall also certify that he or she agrees to follow the best
5 practices described within the standard operating manual. The
6 Administrative Office of the Courts shall provide public access to
7 the standard operating manual by providing a link to the manual on
8 the Oklahoma State Courts Network (OSCN) website.

9 C. 1. Whenever a court-appointed special advocate program is
10 available to the court to serve as a guardian ad litem, priority may
11 be given to appointment of the court-appointed special advocate to
12 serve as guardian ad litem for the child regardless of whether a
13 guardian ad litem has been requested pursuant to the provisions of
14 this subsection.

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

23 3. A court-appointed special advocate shall serve without
24 compensation.

SECTION 2. This act shall become effective November 1, 2022.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
03/03/2022 - DO PASS, As Coauthored.