

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3467

By: Lawson

AS INTRODUCED

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

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

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

Section 1-4-306.

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

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

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

20 b. The attorney appointed for the child shall make
21 arrangements to meet with the child as soon as
22 possible after receiving notification of the
23 appointment. Except for good cause shown, the
24 attorney shall meet with the child prior to any

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

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

22 (1) a determination of the circumstances of the child
23 through a full and efficient investigation,
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- (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, the court may in its discretion allow the attorney a reasonable reimbursement for mileage.

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

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

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

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

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

1 protective services workers and any other person with
2 knowledge relevant to the case,

3 b. advocate for the best interests of the child by
4 participating in the case, attending any hearings in
5 the matter and advocating for appropriate services for
6 the child when necessary,

7 c. monitor the best interests of the child throughout any
8 judicial proceeding, and

9 d. present written reports on the best interests of the
10 child that include conclusions and recommendations and
11 the facts upon which they are based.

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

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

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

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

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

22 3. A court-appointed special advocate shall serve without
23 compensation.
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SECTION 2. This act shall become effective November 1, 2022.

58-2-8801 CMA 12/17/21