

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 230

By: Griffin

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5  
6 AS INTRODUCED

7 An Act relating to guardians ad litem; amending 10A  
8 O.S. 2011, Section 1-4-306, which relates to  
9 guardians ad litem and court-appointed special  
advocates; clarifying certain responsibility; and  
providing an effective date.

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

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

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

23 b. The court shall not be required to appoint an attorney  
24 for any person other than a parent, or legal guardian

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  
24 with the child over the telephone if a personal visit

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

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

- 20 (1) a determination of the circumstances of the  
21 child through a full and efficient  
22 investigation,
- 23 (2) assessment of the child at the moment of  
24 the determination,

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

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

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

21 4. When an attorney is required to travel to more than one  
22 district court location in order to represent a child or children  
23 whom the attorney has been court-appointed to represent, the court  
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1 may in its discretion allow the attorney a reasonable reimbursement  
2 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. On or before December 31, 2009, the Administrative Director  
20 of the Courts shall develop a standard operating manual for  
21 guardians ad litem which shall include, but not be limited to, legal  
22 obligations and responsibilities, information concerning child  
23 abuse, child development, domestic abuse, sexual abuse, and parent  
24 and child behavioral health and management including best practices.

1 After publication of the manual, all guardians ad litem shall  
2 certify to the court in which he or she is appointed as a guardian  
3 ad litem that the manual has been read and all provisions contained  
4 therein are understood. The guardian ad litem shall also certify  
5 that he or she agrees to follow the best practices described within  
6 the standard operating manual. The Administrative Director of the  
7 Courts shall provide public access to the standard operating manual  
8 and shall periodically review and revise the manual as deemed  
9 necessary.

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

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

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1 3. A court-appointed special advocate shall serve without  
2 compensation.

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