

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL NO. 989

By: Floyd

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Children's Code;  
8 amending 10A O.S. 2011, Section 1-4-306, as amended  
9 by Section 1, Chapter 271, O.S.L. 2015 (10A O.S.  
10 Supp. 2018, Section 1-4-306), which relates to  
11 guardians ad litem; modifying responsibility for  
12 development of certain manual; and providing an  
13 effective date.

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

15 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-306, as  
16 amended by Section 1, Chapter 271, O.S.L. 2015 (10A O.S. Supp. 2018,  
17 Section 1-4-306), is 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  
such request, if it deems representation by counsel

1 necessary to protect the interest of the parent, legal  
2 guardian, or custodian.

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

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

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

11 c. The attorney shall represent the child and any  
12 expressed interests of the child. To the extent that  
13 a child is unable to express an interest, either  
14 because the child is preverbal, very young or for any  
15 reason is incapable of judgment and meaningful  
16 communication, the attorney shall substitute his or  
17 her judgment for that of the child and formulate and  
18 present a position which serves the best interests of  
19 the child. Such formulation must be accomplished  
20 through the use of objective criteria rather than  
21 solely the life experience or instinct of the  
22 attorney. The objective criteria shall include, but  
23 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.

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

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

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

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

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

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

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

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

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

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

23           2. For purposes of the Oklahoma Children's Code, a "court-  
24 appointed special advocate" and a "guardian ad litem" shall have the

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

7 3. A court-appointed special advocate shall serve without  
8 compensation.

9 SECTION 2. This act shall become effective November 1, 2019.

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