

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)  
CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 1939

By: Voskuhl of the House

and

Wilkerson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 1109, as amended by Section 22, Chapter 298, O.S.L. 1992 and 1136, as amended by Section 34, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1993, Sections 1109 and 1136), which relate to the questioning of certain children; modifying admissibility of evidence gained during certain custodial interrogations; prohibiting the commencement of certain interrogations under certain circumstances; prohibiting the abrogation of certain rights; requiring certain information be provided to foster parents; specifying such information; authorizing foster parents to request certain examinations and tests on a child prior to certain placement; providing for certain rights and procedures relating to such examinations and tests; amending 22 O.S. 1991, Section 991b, which relates to suspended sentences; modifying time limit for hearing on revocation of suspended sentences; specifying that certain evidence be competent evidence; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1109, as amended by Section 22, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1993, Section 1109), is amended to read as follows:

Section 1109. A. ~~No~~ Except with regard to a person sixteen (16) or seventeen (17) years of age who is suspected of having committed a crime specified in subsection A of Section 1104.2 of this title, no information gained by questioning during custodial interrogation of a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the questioning interrogation about any alleged offense by any law enforcement officer or investigative

agency, or employee of the court, or the Department is done in the presence of the parents, guardian, attorney, or legal custodian of the child. Nothing in this section shall be construed to abrogate any rights guaranteed by the United States Constitution. No such ~~questioning~~ interrogation shall commence until the child and his parents, or guardian, or other legal custodian have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund.

B. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court if a petition has been filed alleging that the child is a deprived child, a child in need of supervision, or a child in need of treatment, or if termination of parental rights is a possible remedy, provided that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian. If the child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of Section 1103 of this title, the court shall appoint a separate attorney, who shall not be a district attorney, for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel.

C. Whenever a petition is filed alleging that a child is a deprived child, a delinquent child or a child in need of supervision, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child or his attorney and whenever a court-appointed special advocate is

available to the court to serve as a guardian ad litem regardless of whether or not a guardian ad litem has been requested by the child or his attorney. The availability of a court-appointed special advocate shall be determined by the executive director of the court-appointed special advocate program for the county.

1. The guardian ad litem shall not be a district attorney, an employee of the office of the district attorney, an employee of the court, an employee of a juvenile bureau established pursuant to the provisions of Sections 1201 through 1210 of this title, or an employee of any public agency having duties or responsibilities towards the child.

2. Whenever a court-appointed special advocate is available for appointment as a guardian ad litem as provided by this subsection, the court shall give priority to the appointment of a court-appointed special advocate as the guardian ad litem of a deprived child.

D. For the purpose of this section and Section 846 of Title 21 of the Oklahoma Statutes, a "court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the court to serve as an officer of the court and represent any child wherein a juvenile petition has been filed, based on the availability of volunteers, until discharged by the court. It shall be the duty and responsibility of the court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement.

The court-appointed special advocate shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or Section 846 of Title 21 of the Oklahoma Statutes.

A court-appointed special advocate shall serve without compensation and shall have such other qualifications and duties and responsibilities as may be prescribed by rule by the Supreme Court. Any person participating in a judicial proceeding as a

court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in positions of management of a CASA organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any CASA organization advocates, managers, or directors.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the Department of Human Services, any other public officer or employee, or any court-appointed special advocate (CASA), to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

E. The district attorney shall prepare and prosecute any case or proceeding within the purview of Chapter 51 of this title.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1136, as amended by Section 34, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1993, Section 1136), is amended to read as follows:

Section 1136. A. It shall be the responsibility of the Department to provide care for deprived children who are committed to the care of the Department for custody or guardianship. The Department may provide for the care of such children in the home of the child, the home of a relative of the child, in a foster home, group home, transitional living program, independent living program or in any other community-based facility under the jurisdiction or licensure of the Department established for the care of deprived children, except that a deprived child may not be placed in an institution operated by the Department ~~after October 1, 1982. Any deprived children in Department-operated institutions on October 1, 1982, shall be removed from such institutions no later than June 30, 1983.~~ A deprived child found

by a court to be a child in need of mental health treatment shall be placed as provided by Section 1135.1 of this title.

B. When the Department places a child in a foster home, the Department shall provide the foster parent with sufficient medical information to enable the foster parent to care for the child appropriately. Such medical information shall include, but not be limited to:

1. Any medical or psychological conditions;

2. Diseases, illnesses, accidents, allergies, and congenital defects; and

3. Immunization history.

C. 1. When the Department places a child in a foster home, as a condition of such placement, the foster parent may request the Department to provide contagious or infectious screening examinations or tests on the child.

2. The Department shall provide for the examinations or tests on the child within ten (10) working days of the request of such foster parent.

3. If the Department determines that parental consent is required for the examinations or tests, the Department shall, within the ten-day time period, obtain the parental consent necessary or, if parental consent cannot be obtained, the Department shall request an order from the district court authorizing such examinations or tests. Any parental consent or judicial authorization received by the Department, pursuant to the provisions of this section, shall also apply to any future examinations or tests deemed necessary by the Department upon the request of the foster parent.

4. The Department may also designate other persons who may request the performance of such examinations or tests on the child, including but not limited to Department employees, direct caregivers and physicians.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991b, is amended to read as follows:

Section 991b. Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended

sentence of said person may not be revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of said suspended sentence is presented to the court at a hearing to be held for that purpose within twenty (20) days after the ~~date of arrest~~ entry of the plea of not guilty to the petition, unless waived by both the state and the defendant.

Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, the Department of Corrections shall forward to the district attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the court, and said district attorney shall file a petition setting forth the grounds for revocation.

The defendant ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if he undergoes a change of condition which materially affects his ability to comply with the court's order.

At the hearing, if one of the grounds for the petition for revocation is the defendant's failure to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or his immediate family, the court may cancel all or any part of the amount still due, or modify the terms or method of payment.

The court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at said hearing shall have the right to be represented by counsel, to present competent evidence in his own behalf and to be confronted by the witnesses against him. Any order of the court revoking such suspended sentence, in whole or in part, shall be subject to review on appeal, as in other appeals of criminal cases. Provided, however, that if the crime for which the

suspended sentence is given was a felony, he may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a felony, he shall not be allowed bail pending appeal.

SECTION 4. This act shall become effective September 1, 1994.

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