

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1341

By: Boyd (Laura)

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1109, as amended by Section 22, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1109) and 21 O.S. 1991, Section 846, as amended by Section 2, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1992, Section 846), which relate to child abuse; prohibiting the name of the parent or legal guardian of a child abuse victim from being disclosed except under certain conditions; providing an effective date; and declaring an emergency.

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. 1992, Section 1109), is amended to read as follows:

Section 1109. A. No information gained by questioning a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the questioning 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. No such questioning 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, including the name of the child abuse victim and the name of such child's parent or legal guardian, unless the nondisclosure of the name of such child's parent or legal guardian may endanger public safety, 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 21 O.S. 1991, Section 846, as amended by Section 2, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1992, Section 846), is amended to read as follows:

Section 846. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians,

- residents and interns, examining, attending or treating a child under the age of eighteen (18) years,
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- d. other person

having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

B. It shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided in this section. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his parents or other persons responsible for his care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the

person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. 1. The county office receiving any report as provided in this section shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services for the purposes set forth in subsection D of this section.

2. Whenever, after a preliminary inquiry or investigation, the Department of Human Services determines that an alleged abuse or neglect of a child was:

- a. perpetrated by someone other than a person responsible for the child's health and welfare, and
- b. does not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral. After making the referral, the Department shall not be responsible for further investigation of the case unless notice is received from the law enforcement agency as provided by paragraph 3 of this subsection. The Department of Human Services shall promulgate rules and regulations for the implementation of the provisions of this subsection. Said rules and regulations shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

3. Any law enforcement agency receiving a referral as provided in this subsection shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department.

Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral.

D. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this subsection.

E. 1. All records concerning child abuse, including the name of the child abuse victim and the name of such child's parent or legal guardian, unless the nondisclosure of the name of such child's parent or legal guardian may endanger public safety, 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.

2. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of

Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

F. No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

G. 1. In every case filed under Section 843 of this title, the judge of the district court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

2. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

3. At such time as the information maintained by the registry provided for by subsection D of this section is indexed by perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 3. This act shall become effective July 1, 1993.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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