

SHORT TITLE: Children; expanding provisions for taking testimony of child; construing provision; codification; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1106

By: Williams (Penny)

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1109, as amended by Section 22, Chapter 298, O.S.L. 1992, 1111, as last amended by Section 1, Chapter 302, O.S.L. 1993, 1147, and 1148 (10 O.S. Supp. 1993, Sections 1109 and 1111), which relate to questioning a child, conducting hearings, admissibility of prerecorded statements and taking testimony from child; modifying language; modifying statutory reference; opening hearing to certain persons; adding certain relationship for purpose of certain procedure; removing limitations pertaining to certain aged child; expanding provisions for taking testimony of child alleged deprived; clarifying language; establishing procedure for taking child victim's testimony; giving parents certain rights; authorizing testimony by recording; specifying conditions of certain recording; construing provision; providing for codification; 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. 1993, 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 of Human Services 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,

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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~~ Section 1101 et seq. of this title.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1111, as last amended by Section 1, Chapter 302, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1111), is amended to read as follows:

Section 1111. A. All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time.

1. Except as provided by paragraph 2 of this subsection, the hearings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Any victim ~~or~~ and relative of a victim of a juvenile criminal act shall be considered to have a direct interest in the case and shall be notified of all court hearings involving that particular juvenile criminal act as provided by Section ~~2~~ 215.33 of ~~this act~~ Title 19 of the Oklahoma Statutes. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by law.

2. Hearings related to the second or subsequent delinquency adjudication of a child shall be public proceedings. The

adjudications relied upon to determine whether a hearing is a public proceeding pursuant to this paragraph shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order specific testimony or evidence to be heard in private. For the purposes of this paragraph, "good cause" shall mean a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing.

B. The child defendant may remain silent as a matter of right in delinquency hearings and in need of supervision hearings, and before he is interrogated he shall be so advised. A child who is determined to be competent to testify shall not refuse to be a witness in a hearing to determine whether or not said child is deprived, unless the privilege against self-incrimination is invoked. The testimony of said child in an abuse or deprivation proceeding may be given as provided by Section 1147 or 1148 of this title or as otherwise authorized by law for the protection of child witnesses.

C. A decision determining a child to come within the purview of this chapter must be based on sworn testimony and the child must have the opportunity for cross-examination unless the facts are stipulated. Where a child is alleged to be delinquent and the facts are stipulated, the judge must ascertain from the child if he agrees with the stipulation and if he understands the consequences of stipulating the facts.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1147, is amended to read as follows:

Section 1147. A. This section shall apply only to a proceeding affecting the parent-child, guardian-child, child-child, when not related or family relationship in which a child ~~twelve (12) years of age or younger~~ is alleged to have been abused, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

2. No attorney for any party is present when the statement is made;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

6. Every voice on the recording is identified;

7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party; and

8. Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1148, is amended to read as follows:

Section 1148. A. This section shall apply only to a proceeding affecting the parent-child, guardian-child, child-child when not related or family relationship in which a child ~~twelve (12) years of age or younger~~ is alleged to have been abused or deprived, and shall apply only to the testimony of ~~that~~ the abused or deprived child or to other child witnesses testifying in a proceeding to prove abuse or deprivation.

B. The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in
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the courtroom to be viewed by the court, the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

C. The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under subsection B of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The court shall ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

3. Every voice on the recording is identified; and

4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. If the testimony of a child is taken as provided by subsections B or C of this section, the child shall not be compelled to testify in court during the proceeding.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1109.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. When any child, who is a victim of a crime alleged to have been committed by another child, is to give testimony against such child in any juvenile delinquency proceeding, testimony and questioning shall not commence until the child victim and his parents, guardian, or other legal custodian have been fully advised of their constitutional and legal rights. In addition to legal counsel for the child victim, the parents, guardian or other legal custodian shall have the right to be present at every stage of the delinquency proceedings, during questioning and when any testimony is given by either the alleged offender or the victim.

B. The court may, on the motion of any party to the proceeding or the child victim or parents, guardian or other legal custodian of any child victim, order that the testimony of the child victim be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court, the finder of fact and the parties to the proceeding; provided, however, the court shall only order this procedure when the court has heard evidence and determines that the use of such procedure is necessary to protect the welfare of the particular child witness, and that any trauma which might result from testifying in person would be significantly damaging to the child witness. Only an attorney for each party, an attorney for the child victim and parent or other person whose presence would contribute to the welfare and well-being of the child victim and persons necessary to operate the equipment may be present in the room with the child victim during his testimony. Only the attorneys for the parties may question the child victim. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

C. The court may, on the motion of any party to the proceeding or the child victim or the parents, guardian or other legal custodian of the child victim, order that the testimony of the child victim be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact

and the parties to the proceeding; provided, however, the court shall only order this procedure when the court has heard evidence and determines that the use of such procedure is necessary to protect the welfare of the particular child witness, and that any trauma which might result from testifying in person would be significantly damaging to the child witness. Only those persons permitted to be present at the taking of testimony under subsection B of this section may be present during the taking of the child victim's testimony. Only the attorneys for the parties may question the child victim, and the persons operating the equipment shall be confined from the child's sight and hearing. The court shall ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

3. Every voice on the recording is identified; and

4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. If the testimony of a child victim is taken as provided by subsections B or C of this section, said child shall not be compelled to testify in court during the proceeding.

E. Nothing in this section shall be construed to alter or amend the provisions relating to a child's testimony in a proceeding of alleged abuse or deprivation or any protections afforded by law to any child witness in any adult proceeding.

SECTION 6. 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.

