STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1261 By: Smith of the Senate

and

Hastings of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to courts; amending 10 O.S. 1991, Section 1119, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7003-8.1), which relates to the Oklahoma Children's Code; limiting application of section; amending Section 178, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 350, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7307-1.2), which relates to the Oklahoma Juvenile Code; excluding certain records from confidentiality limitation; updating statutory references; amending 11 O.S. 1991, Section 14-111, which relates to municipal ordinances; conforming language; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1119, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7003-8.1), is amended to read as follows:

Section 7003-8.1 A. In placing a child in the custody of an individual or in the custody of a private agency or institution, the court shall, if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents. It shall be left to the discretion of the judge to place children

where their total needs will best be served. Under no circumstances shall a child be placed in the custody of an individual subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act. No individual that has been convicted of any crime involving domestic abuse or is married to or living with a person convicted of a crime involving domestic abuse shall receive custody of a child unless that person is able to show by clear and convincing evidence that the child will not be at risk by such placement.

B. 1. Prior to placing a child in the custody of an individual, the court shall inquire as to whether the individual has been previously convicted of a felony or a relevant misdemeanor or has any felony or relevant misdemeanor charges pending.

2. Prior to the custody order being entered, the person seeking custody shall respond by certified affidavit or through sworn testimony to the court and shall provide an Oklahoma criminal history record obtained pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes, or obtained from a county sheriff upon payment of Ten Dollars ($10.00) to the sheriff's office.

3. For purposes of this subsection, "relevant misdemeanor" may include, but shall not be limited to, assault and battery, alcohol- or drug-related offenses, crimes involving domestic abuse, and other offenses deemed relevant by the court.

C. The provisions of this section shall not apply in any paternity or domestic relations case, unless otherwise ordered by the court.

SECTION 2. AMENDATORY Section 178, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 350, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7307-1.2), is amended to read as follows:

Section 7307-1.2 A. Except as provided by this section or as otherwise specifically provided by state or federal laws, the following juvenile records are confidential and shall not be open to the general public, inspected, or their contents disclosed:

1. Juvenile court records;

2. Agency records;

3. District attorney's records;

4. Law enforcement records;

5. Nondirectory education records; and

6. Social records.

B. The confidentiality limitation of subsection A of this section shall not apply to statistical information or information of a general nature obtained pursuant to the provisions of the Oklahoma Juvenile Code.

C. ~~1.~~ The confidentiality requirements of subsection A of this section for juvenile court records and law enforcement records shall not apply:

a. upon the certification of a juvenile as an adult pursuant to Section 7303-4.3 of this title,

b. upon the charging of an individual pursuant to Section 7306-1.1 of this title,

c. to a violation of any traffic regulation or motor vehicle regulation of Title 47 of the Oklahoma Statutes, or to a violation of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets, or to the operation of self-propelled or nonself-propelled vehicles of any kind in this state,

d. to a juvenile who is fourteen (14) years of age or older and who has been adjudicated delinquent and who subsequently comes before the juvenile court on a new delinquency matter after July 1, 1995, ~~or~~

e. to a juvenile adjudicated a delinquent for committing a delinquent act which, if committed by an adult, would be a felony offense that is a crime against the person or a felony offense involving a dangerous weapon, or

f. to a violation of the Prevention of Youth Access to Tobacco Act.

D. Following the first adjudication as a delinquent, the court having jurisdiction shall note on the juvenile court record of the person that any subsequent juvenile court records shall not be confidential; provided, the child is at least fourteen (14) years of age or older. Any juvenile court record which becomes an open juvenile record as provided in this subsection may be expunged as provided in Section ~~8~~ 7307-1.8 of this ~~act~~ title.

The provisions of this subsection shall only apply to the juvenile court records and law enforcement records of juvenile offenders certified, charged or adjudicated on and after July 1, 1995.

E. When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the delinquent child whether or not the juvenile record is confidential or open.

F. Except as otherwise required by state or federal law, the confidential records listed in subsection A of this section may only be inspected, released, disclosed, corrected or expunged pursuant to an order of the court. Except as otherwise provided in Section 601.6 of this title or any provision of this chapter, no subpoena or subpoena duces tecum purporting to compel disclosure of confidential information or any confidential juvenile record shall be valid.

G. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

Except for district attorney records, any court order authorizing the disclosure, release or inspection of a

confidential juvenile record may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

H. Upon the filing of a petition for inspection, release, disclosure, or correction of a juvenile record, the court shall set a date for a hearing and shall provide a thirty-day notice to all interested parties, the person who is the subject of the record if the person is eighteen (18) years of age or older, or to the parents of a child if the child is less than eighteen (18) years of age, and to the attorneys of record, if any. The hearing may be closed at the discretion of the court.

I. Any agency or person may seek an order from the juvenile court prohibiting the release of confidential information subject to disclosure without an order of the court pursuant to Section 620.6 of this title or any provision of this chapter. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

J. In accordance with the provisions of the Serious and Habitual Juvenile Offender Act and Section 620.6 of this title:

1. Information included in the records listed in subsection A of this section may be entered in and maintained in the Juvenile Justice Information System and other automated information systems related to services to children and youth whether or not the record is confidential or open; and

2. The information systems may be accessed by participating agencies as defined by this chapter or as otherwise provided by law.

K. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and shall state specifically the type of information which may be reviewed and reported.

Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of juveniles,

parents and other persons as may be required by the court to be confidential will remain confidential.

L. Nothing contained in the provisions of Section 620.6 of this title or any provision of this chapter shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;

2. Authorizing the disclosure of information required to be kept confidential by Section ~~55.1, 57, 60.17~~ 7505-1.1, 7506-1.1 or ~~60.29~~ 7510-1.5 of this title or disclosure of any other confidential record pursuant to the provisions of this chapter;

3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

4. Limiting or otherwise affecting access of parties to a juvenile proceeding to any records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;

6. Prohibiting the Department of Juvenile Justice from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect; or

7. Prohibiting the person or agency conducting a preliminary inquiry relating to an alleged delinquent act from providing information, as to the disposition of the matter by the district attorney, to the person or agency which referred the matter, including but not limited to whether a petition was filed or an alternative action taken, and the basis for such action and the terms of any agreement entered into by the child for payment of restitution, and including but not limited to provisions for community services.

M. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district, the agency in possession of the records shall provide the requested information to the school district. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 14-111, is amended to read as follows:

Section 14-111. A. The governing body of a municipality may provide for enforcement of its ordinances and establish fines, penalties, or imprisonment, as authorized by subsections B through D of this section, for any offense in violation of its ordinances, which shall be recoverable with costs of suit. The governing body may provide that any person fined for violation of a municipal ordinance who is financially able but refuses or neglects to pay the fine or costs may be compelled to satisfy the amount owed by working on the streets, alleys, avenues, areas, and public grounds of the municipality, subject to the direction of the street commissioner or other proper officer, at a rate per day as the governing body may prescribe by ordinance, but not less than Five Dollars ($5.00) per day for useful labor, until the fine or costs are satisfied.

B. Cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of ~~Five Hundred Dollars ($500.00)~~ <u>One Thousand Two Hundred Dollars ($1,200.00)</u> and costs or imprisonment not exceeding ~~ninety (90) days~~ <u>six (6) months</u> or both the fine and imprisonment, but shall not have authority to enact any ordinance making unlawful an act or omission declared by state statute to be punishable as a felony. Provided, that cities having a municipal criminal court of record may enact ordinances

prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ~~ninety (90) days~~ six (6) months or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

C. Municipalities having a municipal court not of record may enact ordinances prescribing maximum fines of Two Hundred Dollars ($200.00) and costs pursuant to the provisions of Section 27-126 of this title or imprisonment not exceeding thirty (30) days or both the fine and imprisonment, provided that municipalities having only a municipal court not of record shall not have authority to enact any ordinance making unlawful any act or omission declared by state statute to be punishable as a felony. A municipal ordinance may not impose a penalty, including fine and costs, which is greater than that established by statute for the same offense. Provided, that municipalities having a municipal court not of record may enact ordinance prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

D. Municipalities having both municipal criminal courts of record and municipal courts not of record may enact ordinances, within the authority of this section, for both such courts.

E. No municipality may levy a fine of over Fifty Dollars ($50.00) until it has compiled and published its penal ordinances as required in Sections 14-109 and 14-110 of this title.

SECTION 4. This act shall become effective November 1, 1998.

46-2-3117 KSM (<time=system>)