

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3118

By: Hill

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5
6 AS INTRODUCED

7 An Act relating to juveniles; amending 10A O.S. 2011,
8 Section 2-2-301, as last amended by Section 1,
9 Chapter 155, O.S.L. 2018 (10A O.S. Supp. 2019,
10 Section 2-2-301), which relates to the Oklahoma
11 Juvenile Code; authorizing courts to determine
12 indigency based on resources and income of youthful
13 offender or child under certain circumstances; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-301, as
17 last amended by Section 1, Chapter 155, O.S.L. 2018 (10A O.S. Supp.
18 2019, Section 2-2-301), is amended to read as follows:

19 Section 2-2-301. A. No information gained by a custodial
20 interrogation of a youthful offender under sixteen (16) years of age
21 or a child nor any evidence subsequently obtained as a result of
22 such interrogation shall be admissible into evidence against the
23 youthful offender or child unless the custodial interrogation about
24 any alleged offense by any law enforcement officer or investigative
agency, or employee of the court, or employee of the Office of
Juvenile Affairs is done in the presence of the parents, guardian,

1 attorney, adult relative, adult caretaker, or legal custodian of the
2 youthful offender or child. No such custodial interrogation shall
3 commence until the youthful offender or child and the parents,
4 guardian, attorney, adult relative, adult caretaker, or legal
5 custodian of the youthful offender or child have been fully advised
6 of the constitutional and legal rights of the youthful offender or
7 child, including the right to be represented by counsel at every
8 stage of the proceedings, and the right to have counsel appointed by
9 the court if the parties are without sufficient financial means;
10 provided, however, that no legal aid or other public or charitable
11 legal service shall make claim for compensation as contemplated
12 herein. It is further provided that where private counsel is
13 appointed in such cases, the court shall set reasonable compensation
14 and order the payment out of the court fund. As used in this
15 section, "custodial interrogation" means questioning of a youthful
16 offender under sixteen (16) years of age or child while that
17 youthful offender or child is in law enforcement custody or while
18 that youthful offender or child is being deprived of freedom of
19 action in any significant way by a law enforcement officer, employee
20 of the court, or employee of the Office. Custodial interrogation
21 shall conform with all requirements for interrogation of adult
22 criminal offenders. The term "custodial interrogation" shall not be
23 deemed to mean questioning of a youthful offender or child by a
24 public school administrator or teacher, so long as such questioning

1 is not being conducted on behalf of a law enforcement officer, an
2 employee of the court or an employee of the Office. Any information
3 gained from noncustodial questioning of a child or youthful offender
4 by a public school administrator or teacher concerning a wrongful
5 act committed on public school property shall be admissible into
6 evidence against the youthful offender or child.

7 B. A custodial interrogation of a youthful offender over
8 sixteen (16) years of age shall conform with all the requirements
9 for the interrogation of an adult.

10 C. If the youthful offender or child is not otherwise
11 represented by counsel, whenever a petition is filed pursuant to the
12 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this
13 title, the court shall appoint an attorney, who shall not be a
14 district attorney, for the youthful offender or child regardless of
15 any attempted waiver by the parent or other legal custodian of the
16 youthful offender or child of the right of the youthful offender or
17 child to be represented by counsel. The youthful offender or child
18 shall be represented by counsel at every hearing or review through
19 completion or dismissal of the case. Counsel shall be appointed by
20 the court only upon determination by the court that the parent,
21 legal guardian or legal custodian is found to be indigent. If
22 indigency is established, the Oklahoma Indigent Defense System shall
23 represent the child in accordance with Section 1355.6 of Title 22 of
24 the Oklahoma Statutes or the applicable office of the county

1 indigent defender shall represent the child in accordance with
2 Section 138.5 of Title 19 of the Oklahoma Statutes. Provided, if
3 the parent or legal guardian of a child is not indigent but refuses
4 to employ counsel, the court shall appoint counsel to represent the
5 child at detention hearings until counsel is provided. Costs of
6 representation shall be imposed on the parent or other legal
7 custodian as provided by Section 138.10 of Title 19 of the Oklahoma
8 Statutes. Thereafter, the court shall not appoint counsel for a
9 child with a nonindigent parent or legal custodian and shall order
10 the parent or legal custodian to obtain counsel. A parent or legal
11 custodian of an indigent child who has been ordered to obtain
12 counsel for the child and who willfully fails to follow the court
13 order shall be found in indirect contempt of court. In the event
14 the victim of the delinquent act is a member of the same household
15 as the youthful offender or child who committed the delinquent act,
16 a determination of indigency by the court shall be based upon the
17 resources and income of the youthful offender or child, and not that
18 of the parent, legal guardian or legal custodian.

19 D. In all cases of juvenile delinquency, adult certification,
20 reverse certification, or youthful offender proceedings and appeals,
21 or any other proceedings and appeals pursuant to the Oklahoma
22 Juvenile Code, except mental health or in-need-of-supervision
23 proceedings and appeals, and any other juvenile proceedings that are
24 civil in nature, and other than in counties where the office of the

1 county indigent defender is appointed, the Oklahoma Indigent Defense
2 System shall be appointed to represent indigent juveniles as
3 provided for in the Indigent Defense Act. In all other cases
4 pursuant to this title, including juvenile proceedings that are
5 civil in nature, juvenile mental health or in-need-of-supervision
6 proceedings and appeals, with the exception of proceedings in
7 counties where the office of the county indigent defender is
8 appointed, the court shall, if counsel is appointed and assigned,
9 allow and direct to be paid from the local court fund a reasonable
10 and just compensation to the attorney or attorneys for such services
11 as they may render; provided, that any attorney appointed pursuant
12 to this subsection shall not be paid a sum in excess of One Hundred
13 Dollars (\$100.00) for services rendered in preliminary proceedings,
14 Five Hundred Dollars (\$500.00) for services rendered during trial,
15 and One Hundred Dollars (\$100.00) for services rendered at each
16 subsequent post-disposition hearing.

17 E. Counsel for the child shall advise the child and advocate
18 the expressed wishes of the child, as much as reasonably possible,
19 under the same ethical obligations as if the client were an adult.
20 Upon motion by the state, the child, the attorney for the child, or
21 a parent or legal custodian of the child, the court shall appoint a
22 guardian ad litem.

23 F. The guardian ad litem shall not be a district attorney, an
24 employee of the office of the district attorney, an employee of the

1 court, an employee of a juvenile bureau, or an employee of any
2 public agency having duties or responsibilities towards the child.
3 The guardian ad litem shall be given access to the court file and
4 access to all records and reports relevant to the case and to any
5 records and reports of examination of the child's parent or other
6 custodian, made pursuant to this section or Section 1-2-101 of this
7 title. Provided, nothing in this subsection shall obligate counsel
8 for the child to breach attorney-client confidentiality with the
9 child.

10 SECTION 2. This act shall become effective November 1, 2020.

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12 57-2-9894 GRS 12/27/19
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