

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3524

By: Virgin

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2021,
8 Section 2-2-301, which relates to juvenile
9 delinquents; requiring consultation with legal
10 counsel prior to custodial interrogation; requiring
11 custodial interrogation be electronically recorded;
12 prohibiting destruction or alteration of electronic
13 recording; permitting court to order copy of
14 electronic recording in certain circumstances; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 10A O.S. 2021, Section 2-2-301, is
18 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 has consulted with
4 legal counsel in person, by telephone, or by video conference and
5 the youthful offender or child and the parents, guardian, attorney,
6 adult relative, adult caretaker, or legal custodian of the youthful
7 offender or child have been fully advised of the constitutional and
8 legal rights of the youthful offender or child, including the right
9 to be represented by counsel at every stage of the proceedings, and
10 the right to have counsel appointed by the court if the parties are
11 without sufficient financial means; provided, however, that no legal
12 aid or other public or charitable legal service shall make claim for
13 compensation as contemplated herein. It is further provided that
14 where private counsel is appointed in such cases, the court shall
15 set reasonable compensation and order the payment out of the court
16 fund. As used in this section, "custodial interrogation" means
17 questioning of a youthful offender under sixteen (16) years of age
18 or child while that youthful offender or child is in law enforcement
19 custody or while that youthful offender or child is being deprived
20 of freedom of action in any significant way by a law enforcement
21 officer, employee of the court, or employee of the Office.
22 Custodial interrogation shall conform with all requirements for
23 interrogation of adult criminal offenders. The term "custodial
24 interrogation" shall not be deemed to mean questioning of a youthful

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

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

12 C. A custodial interrogation of a youthful offender or child
13 shall be electronically recorded in its entirety. The electronic
14 recording shall not be destroyed nor altered until one (1) year
15 after the completion of all state and federal appeals of the
16 conviction, including the exhaustion of any appeal of any motion for
17 appropriate relief or habeas corpus proceedings. Upon motion by a
18 youthful offender or a child in a criminal or delinquency
19 proceeding, the court may order that a copy of an electronic
20 recording of a custodian interrogation of the youthful offender or
21 child be preserved for any period beyond the expiration of all
22 appeals, post-conviction relief proceedings, and habeas corpus
23 proceedings.

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1 ~~C.~~ D. If the youthful offender or child is not otherwise
2 represented by counsel, whenever a petition is filed pursuant to the
3 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this
4 title, the court shall appoint an attorney, who shall not be a
5 district attorney, for the youthful offender or child regardless of
6 any attempted waiver by the parent or other legal custodian of the
7 youthful offender or child of the right of the youthful offender or
8 child to be represented by counsel. The youthful offender or child
9 shall be represented by counsel at every hearing or review through
10 completion or dismissal of the case. Counsel shall be appointed by
11 the court only upon determination by the court that the parent,
12 legal guardian or legal custodian is found to be indigent. If
13 indigency is established, the Oklahoma Indigent Defense System shall
14 represent the child in accordance with Section 1355.6 of Title 22 of
15 the Oklahoma Statutes or the applicable office of the county
16 indigent defender shall represent the child in accordance with
17 Section 138.5 of Title 19 of the Oklahoma Statutes. Provided, if
18 the parent or legal guardian of a child is not indigent but refuses
19 to employ counsel, the court shall appoint counsel to represent the
20 child at detention hearings until counsel is provided. Costs of
21 representation shall be imposed on the parent or other legal
22 custodian as provided by Section 138.10 of Title 19 of the Oklahoma
23 Statutes. Thereafter, the court shall not appoint counsel for a
24 child with a nonindigent parent or legal custodian and shall order

1 the parent or legal custodian to obtain counsel. A parent or legal
2 custodian of an indigent child who has been ordered to obtain
3 counsel for the child and who willfully fails to follow the court
4 order shall be found in indirect contempt of court.

5 ~~D.~~ E. In all cases of juvenile delinquency, adult
6 certification, reverse certification, or youthful offender
7 proceedings and appeals, or any other proceedings and appeals
8 pursuant to the Oklahoma Juvenile Code, except mental health or in-
9 need-of-supervision proceedings and appeals, and any other juvenile
10 proceedings that are civil in nature, and other than in counties
11 where the office of the county indigent defender is appointed, the
12 Oklahoma Indigent Defense System shall be appointed to represent
13 indigent juveniles as provided for in the Indigent Defense Act. In
14 all other cases pursuant to this title, including juvenile
15 proceedings that are civil in nature, juvenile mental health or in-
16 need-of-supervision proceedings and appeals, with the exception of
17 proceedings in counties where the office of the county indigent
18 defender is appointed, the court shall, if counsel is appointed and
19 assigned, allow and direct to be paid from the local court fund a
20 reasonable and just compensation to the attorney or attorneys for
21 such services as they may render; provided, that any attorney
22 appointed pursuant to this subsection shall not be paid a sum in
23 excess of One Hundred Dollars (\$100.00) for services rendered in
24 preliminary proceedings, Five Hundred Dollars (\$500.00) for services

1 rendered during trial, and One Hundred Dollars (\$100.00) for
2 services rendered at each subsequent post-disposition hearing.

3 ~~E.~~ F. Counsel for the child shall advise the child and advocate
4 the expressed wishes of the child, as much as reasonably possible,
5 under the same ethical obligations as if the client were an adult.
6 Upon motion by the state, the child, the attorney for the child, or
7 a parent or legal custodian of the child, the court shall appoint a
8 guardian ad litem.

9 ~~F.~~ G. The guardian ad litem shall not be a district attorney,
10 an employee of the office of the district attorney, an employee of
11 the court, an employee of a juvenile bureau, or an employee of any
12 public agency having duties or responsibilities towards the child.
13 The guardian ad litem shall be given access to the court file and
14 access to all records and reports relevant to the case and to any
15 records and reports of examination of the child's parent or other
16 custodian, made pursuant to this section or Section 1-2-101 of this
17 title. Provided, nothing in this subsection shall obligate counsel
18 for the child to breach attorney-client confidentiality with the
19 child.

20 SECTION 2. This act shall become effective November 1, 2022.

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