

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1544

BY: LARASON

AS INTRODUCED

AN ACT RELATING TO MENTAL HEALTH AND CHILDREN;

CREATING THE MENTAL HEALTH TREATMENT OF MINORS ACT;  
PROVIDING SHORT TITLE; DEFINING TERMS; PROVIDING  
PROCEDURES FOR INPATIENT MENTAL HEALTH EVALUATION  
OF CHILDREN; REQUIRING COURT TO SPECIFY CERTAIN  
PERSONS WHO MAY MAKE APPLICATION; PROVIDING THAT  
COURT ORDER SHALL NOT ABROGATE CERTAIN PARENTAL  
LIABILITY; REQUIRING PRESCREENING EVALUATION;  
SPECIFYING FINDINGS REGARDING ORDER OF ADMISSION;  
LIMITING TIME OF EVALUATION; AUTHORIZING EMERGENCY  
ADMISSIONS; ESTABLISHING PROCEDURES FOR COMMITMENT  
OF CHILD TO CERTAIN FACILITIES FOR TREATMENT;  
REQUIRING COUNSEL; REQUIRING HEARING AND NOTICE;  
REQUIRING REPORT WITH APPLICATION; SPECIFYING  
DETERMINATIONS TO BE MADE BY COURT AT HEARING;  
REQUIRING LEAST RESTRICTIVE MENTAL HEALTH  
TREATMENT; SPECIFYING PREREQUISITES FOR COMMITMENT  
OF CERTAIN CHILDREN FOR CERTAIN TREATMENT;  
PROVIDING PROCEDURES FOR ADMISSION TO FACILITY;  
REQUIRING COURT REVIEW; PROVIDING THAT COMMITMENT  
SHALL NOT PRECLUDE SUBSEQUENT ADJUDICATION;  
AMENDING 10 O.S. 1981, SECTIONS 1101, AS LAST  
AMENDED BY SECTION 1, CHAPTER 302, O.S.L. 1990 AND  
1102, AS LAST AMENDED BY SECTION 2, CHAPTER 337,  
O.S.L. 1990 (10 O.S. SUPP. 1990, SECTIONS 1101 AND

1102), WHICH RELATE TO DEFINITIONS AND PETITIONS REGARDING DEPENDENT AND DELINQUENT CHILDREN; STRIKING LANGUAGE DEFINING CERTAIN TERMS; REMOVING REFERENCES TO CHILDREN IN NEED OF TREATMENT; AMENDING 10 O.S. 1981, SECTIONS 1103, AS LAST AMENDED BY SECTION 2, CHAPTER 302, O.S.L. 1990, 1105, AS AMENDED BY SECTION 4, CHAPTER 302, O.S.L. 1990, 1107, AS LAST AMENDED BY SECTION 5, CHAPTER 302, O.S.L. 1990, 1109, AS LAST AMENDED BY SECTION 6, CHAPTER 363, O.S.L. 1989, 1110, AS AMENDED BY SECTION 1, CHAPTER 179, O.S.L. 1986, 1114, AS LAST AMENDED BY SECTION 6, CHAPTER 302, O.S.L. 1990, 1116, AS LAST AMENDED BY SECTION 7, CHAPTER 302, O.S.L. 1990, 1117, AS LAST AMENDED BY SECTION 6, CHAPTER 302, O.S.L. 1990, 1120, AS LAST AMENDED BY SECTION 9, CHAPTER 302, O.S.L. 1990, 1129, AS AMENDED BY SECTION 25, CHAPTER 312, O.S.L. 1982, 1136, AS LAST AMENDED BY SECTION 8, CHAPTER 238, O.S.L. 1990, 1137, AS LAST AMENDED BY SECTION 9, CHAPTER 238, O.S.L. 1990, 1138, AS LAST AMENDED BY SECTION 10, CHAPTER 238, O.S.L. 1990, 1140, AS AMENDED BY SECTION 30, CHAPTER 312, O.S.L. 1982, 1404, AS LAST AMENDED BY SECTION 11, CHAPTER 238, O.S.L. 1990 AND SECTION 18, CHAPTER 312, O.S.L. 1982, AS LAST AMENDED BY SECTION 4, CHAPTER 363, O.S.L. 1989 (10 O.S. SUPP. 1990, SECTIONS 1103, 1105, 1107, 1107.1, 1109, 1110, 1114, 1116, 1117, 1120, 1129, 1136, 1137, 1138, 1140, AND 1404), WHICH RELATE TO PROCEDURES IN TITLE 10 CONCERNING JUVENILE PETITIONS FOR ADJUDICATING CHILDREN DELINQUENT, DEPENDENT, IN NEED OF SUPERVISION, OR IN NEED OF TREATMENT; ELIMINATING REFERENCES AND

PROCEDURES RELATING TO THE ADJUDICATORY CATEGORY OF CHILDREN IN NEED OF TREATMENT; AMENDING 56 O.S. 1981, SECTION 309, AS RENUMBERED BY SECTION 48, CHAPTER 312, O.S.L. 1982, AND AS AMENDED BY SECTION 14, CHAPTER 51, O.S.L. 1990 (10 O.S. SUPP. 1990, SECTION 1413), WHICH RELATES TO TRANSFER OF PUPILS FROM INSTITUTIONS; PROHIBITING TRANSFERS OF CHILDREN TO MENTAL HEALTH INSTITUTIONS WITHOUT COURT ORDER; AMENDING SECTION 1, CHAPTER 250, O.S.L. 1983, AS LAST AMENDED BY SECTION 5, CHAPTER 181, O.S.L. 1987 (28 O.S. SUPP. 1990, SECTION 162), WHICH RELATES TO COLLECTION OF COSTS IN JUVENILE CASES; REMOVING REFERENCE TO CHILDREN ADJUDICATED IN NEED OF TREATMENT; AMENDING 43A O.S. 1981, SECTIONS 50, AS RENUMBERED BY SECTION 103, CHAPTER 103, O.S.L. 1986, AND AS LAST AMENDED BY SECTION 13, CHAPTER 302, O.S.L. 1990 AND 99, AS AMENDED BY SECTION 7, CHAPTER 103, O.S.L. 1986, AND AS RENUMBERED BY SECTION 103, CHAPTER 103, O.S.L. 1986 (43A O.S. SUPP. 1990, SECTIONS 1-104 AND 1-108), WHICH RELATE TO PUBLIC POLICY AND HABEAS CORPUS OF THE MENTAL HEALTH CODE; MODIFYING REFERENCES TO CHILDREN IN NEED OF TREATMENT; AMENDING SECTIONS 16 AND 17, CHAPTER 302, O.S.L. 1990 (43A O.S. SUPP. 1990, SECTIONS 8-202 AND 8-203), WHICH RELATE TO ADMISSIONS OF CERTAIN CHILDREN AND DETENTION OF CHILDREN; MODIFYING REFERENCES TO CHILDREN IN NEED OF TREATMENT; REPLACING PROVISIONS RELATING TO IN NEED OF TREATMENT ADJUDICATIONS WITH REFERENCE TO COMMITMENT PROCEDURES; AMENDING SECTION 26, CHAPTER 338, O.S.L. 1982, AS RENUMBERED BY SECTION 34, CHAPTER 255, O.S.L. 1986, AND AS LAST AMENDED BY

SECTION 1, CHAPTER 160, O.S.L. 1989 (74 O.S. SUPP. 1990, SECTION 4243), WHICH RELATES TO PROHIBITED ACTS OF STATE AGENCIES; ELIMINATING REFERENCES TO IN NEED OF TREATMENT ADJUDICATION; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-205 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Section 2 through Section 13 of this act shall be known and may be cited as the "Mental Health Treatment of Minors Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-206 of Title 43A, unless there is created a duplication in numbering, reads as follows:

As used in the Mental Health Treatment of Minors Act:

1. "Child in need of mental health treatment" means any person under eighteen (18) years of age afflicted with a substantial disorder to the emotional processes, thought or cognition which grossly impairs judgement, behavior, capacity to recognize reality or ability to meet the ordinary demands of life appropriate to the age of the child;

2. The term "child in need of mental health treatment" shall not mean a child afflicted with epilepsy, mental retardation, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs, truancy or sexual activity unless the child also meets the criteria of a child in need of mental health treatment pursuant to paragraph 1 of this section;

3. "Independent" means that the person or persons performing a mental health examination and submitting a report to the court pursuant to the provisions of this title has no financial interest in or other connection to or relationship with a facility in which the child will be placed for inpatient mental health services that would constitute a conflict of interest, and has signed an affidavit to that effect;

4. "Inpatient treatment" means mental health services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health facility;

5. "Less restrictive alternative to inpatient treatment" means and includes but is not limited to outpatient counseling services, including services provided in the home of the child and which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care through a program established and specifically designed to meet the needs of children in need of mental health treatment, or a combination thereof;

6. "Licensed mental health professional" means a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions or a qualified examiner as defined in Section 1-103 of this title;

7. "Mental health evaluation" means an examination or evaluation of a child by a licensed mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the licensed mental health professional:

- a. the child is a child in need of mental health treatment and the least restrictive treatment necessary and appropriate for the child; or
- b. the child is not a child in need of mental health treatment, and the mental health services, if any, necessary and appropriate for the child.

8. "Mental health facility" means a public or private hospital offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation, or a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner as appropriate for the inpatient evaluation and treatment of children;

9. "Next friend" means a person authorized by a court to file an application pursuant to Section 3 of this act;

10. "Prescreening" means a face-to-face mental health examination conducted by a licensed mental health professional to determine whether a child requires inpatient evaluation and may include consultation with other mental health professionals and a review of all available records on the child; and

11. "Ward of the court" means a child alleged or adjudicated to be a deprived child, a child in need of supervision, or a delinquent child. The term shall not be interpreted to include a child admitted to a mental health facility or objecting to such admission pursuant to Section 8-201 or 8-202 of this title unless a petition has otherwise been filed alleging the child to be a deprived or delinquent child or a child in need of supervision.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-207 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Except for an emergency admission, no child who is a ward of the court shall be admitted for inpatient mental health evaluation or treatment unless such admission is ordered by a court.

B. The court shall provide by rule those persons who have the authority to make application to the court for an order committing a child who is a ward of the court to inpatient mental health evaluation or treatment.

C. No child shall be placed in the custody of the Department of Human Services and committed to a mental health facility for evaluation or treatment solely for the purpose of ensuring reimbursement for such evaluation or treatment. Nothing in this subsection shall prohibit an order committing a child who is otherwise in the custody of the Department of Human Services to a mental health facility pursuant to the provisions of Sections 4 and 5 of this act.

D. An order of a court committing a child who is a ward of the court to a mental health facility for inpatient evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the child or of liability for the cost of mental health treatment provided to the child.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-208 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. An application for an order for inpatient mental health evaluation for a child who is a ward of the court shall be filed only after the completion of a prescreening evaluation.

B. Whenever the court receives an application for an order committing a child who is a ward of the court to a mental health facility for inpatient evaluation, the court may order such admission when it finds:

1. There is reasonable cause to believe that the child is a child requiring mental health treatment; and

2. The condition of the child is such that an outpatient evaluation would be inadequate to properly determine the mental health treatment needs of the child.

C. An order committing a child who is a ward of the court for inpatient evaluation shall order the commitment of the child for not more than ten (10) days. If, prior to the expiration of the period of inpatient evaluation, it appears that the child may require inpatient mental health treatment, application may be made to the court requesting an order committing the child to a mental health facility for inpatient treatment. The child may be detained in the mental health facility for no longer than necessary for a hearing on the application and further order of the court.

D. Nothing in this section shall prohibit or preclude the emergency admission of a child who is a ward of the court to a mental health facility for inpatient evaluation or treatment when the condition of the child warrants such admission. Such emergency admission shall be for not more than three (3) days, excluding weekends and legal holidays, unless extended by the court by an order committing the child for inpatient evaluation pursuant to this section or for inpatient mental health treatment pursuant to Section 5 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-209 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Upon the filing of an application for an order committing a child who is a ward of the court to a mental health facility for treatment, the court shall:

1. If the child is not represented by counsel, appoint an attorney to represent the child. An attorney so appointed shall consult with the child at least one (1) day prior to the date set for hearing the application;

2. Set a date for a hearing on the application. Said date shall be not more than five (5) days from the date of the filing of the application if the application has all required reports attached thereto, excluding weekends and legal holidays;

3. Cause notice of the date, time, place and purpose of the hearing to be sent to the child, the parents or legal guardian of the child, the person in charge of the mental health facility and the person filing the application. Said notice shall be delivered at least one (1) day prior to the date set for the hearing.

B. The report of a mental health evaluation of the child by an independent licensed mental health professional shall be attached to an application for an order committing a child to a facility for mental health treatment. If such report is not attached to the application at the time it is filed, or if the court finds the report to be inadequate to aid the court in the disposition of the case, the court shall order an independent mental health evaluation of the child. A report of the evaluation shall be submitted to the court prior to a hearing on the application, and the court may order such other reports as it deems necessary in order to aid the court in the disposition of the case. Any report of a mental health evaluation of a child for whom commitment is sought pursuant to this section which recommends that the child be committed to a facility for inpatient mental health treatment shall be certified and shall be signed by two licensed mental health professionals, at least one of whom shall be independent.

C. At the hearing the court shall determine whether by clear and convincing evidence the child:

1. has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to intentionally or unintentionally seriously injure himself or another person physically and has engaged in one or more recent overt acts

or made significant recent threats which substantially support that expectation; or

2. has a demonstrable mental illness and as a result of that mental illness is unable, as appropriate to the age of the child, to attend to the child's basic physical or psychiatric needs that must be attended to in order for the child to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic physical or psychiatric needs in the recent past.

D. After a hearing, the court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child through a public or private mental health facility until such time as the care and treatment is no longer necessary, which shall be determined by a licensed mental health professional.

E. The court shall not commit a child to a mental health facility for inpatient treatment unless the court determines:

1. that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child; or

2. after a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child.

F. Whenever, after a hearing, the court finds that the child is not a child in need of mental health treatment or that the child is a child in need of mental health treatment but does not require inpatient treatment, the court may make dispositional orders regarding the child pursuant to the provisions of Section 1116 of Title 10 of the Oklahoma Statutes.

G. Whenever, after a hearing the court finds that the child is a child in need of mental health treatment and requires inpatient treatment in a mental health facility, the court shall order the commitment of the child to a mental health facility and:

1. When the child is in the custody of a parent or legal guardian, order the parent or legal guardian to make arrangements for the admission of the child to a public or private mental health facility appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment. The court may order the Department of Human Services to assist the parent or legal guardian in making said arrangements; and

2. When the child is in the custody of the Department of Human Services, order the placement of the child in a public or private mental health facility appropriate for the inpatient treatment needs of the child.

H. Whenever the court commits a child to a mental health facility for inpatient treatment pursuant to this section, the court shall set the matter for review and shall review the matter not more than three (3) months from the date of commitment and shall continue to review the matter at intervals of not more than three (3) months until the child is discharged from inpatient mental health treatment.

I. If warranted by the facts in the case, an order committing a child to a mental health facility for inpatient treatment shall not serve to preclude a subsequent adjudication which finds the child to be delinquent, in need of supervision or deprived or shall not cause the vacation of any such order of adjudication previously entered.

SECTION 6. AMENDATORY 10 O.S. 1981, Section 1101, as last amended by Section 1, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1101), is amended to read as follows:

Section 1101. When used in this title, unless the context otherwise requires:

1. "Child" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 1104.2 of this title, or who has been certified as an adult pursuant to Section 1112 of this title; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 1104.2 of this title, or who is not convicted after certification as an adult pursuant to Section 1112 of this title, shall continue to be subject to the jurisdiction of the juvenile court.

2. "Delinquent child" means a child who:

- a. has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of Sections 1101 through 1506 of this title, or
- b. has habitually violated traffic laws or traffic ordinances.

3. "Child in need of supervision" means a child who:

- a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian, or
- b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return, or
- c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.

4. "Deprived child" means a child:
- a. who is for any reason destitute, homeless, or abandoned, or
  - b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be, or
  - c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment, or
  - d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child, or
  - e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance, or

- f. whose parent or legal custodian for good cause desires to be relieved of his custody.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of Sections 1101 through 1506 of this title. The phrase dependent and neglected shall be deemed to mean deprived.

5. ~~"Child in need of treatment" means a child who has a demonstrable mental illness and as a result of that mental illness:~~

- ~~a. can be expected within the near future to intentionally or unintentionally seriously physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, or~~
- ~~b. is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.~~

~~The term "child in need of treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually~~

~~active unless the child also meets the criteria for a child in need of treatment pursuant to subparagraphs a or b of this paragraph.~~

~~6.~~ 6. "Handicapped child" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

~~7.~~ 6. "Department" means the Department of Human Services.

~~8.~~ 7. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Section 1103 of this title are supported by the evidence and whether a child should be adjudged to be a ward of the court.

~~9.~~ 8. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the court.

~~10.~~ 9. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

~~11.~~ 10. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by a public or private agency.

~~12.~~ 11. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which

relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

~~13.~~ 12. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the child, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services.

~~14.~~ 13. "Day treatment" means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

~~15.~~ 14. "Group home" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

~~16.~~ 15. "Community residential center" means a residential facility for no more than twenty children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

~~17.~~ 16. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident.

~~18.~~ 17. "Mental health facility" means:

- a. a facility or program operated by the Department of Mental Health and Substance Abuse Services or a facility or program operated by a private agency which offers outpatient or residential care and treatment services to children ~~in need of~~ needing mental health treatment including but not limited to public or private hospitals, institutions, or agencies, comprehensive mental health centers, clinics, satellites, day treatment facilities, halfway homes, and group homes. A facility which or a program that offers outpatient care and treatment services to children ~~in need of~~ needing mental health treatment shall be certified by the Department of Mental Health and Substance Abuse Services. A facility which offers residential treatment services to children ~~in need of~~ needing mental health treatment shall be licensed by the Department of Mental Health and Substance Abuse Services except that a facility accredited by the Joint Commission on Accreditation of Hospitals to provide care and treatment to children ~~in need of~~ needing mental health treatment shall be deemed to meet rules and regulations promulgated by the Department of Mental Health and Substance Abuse Services for licensure, or
- b. a child guidance center operated by the State Department of Health, or
- c. a facility or program operated by the Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the Department.

~~19.~~ 18. "Qualified mental health professional" means an individual having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who:

- a. holds at least a master's degree in a mental health field and is employed by the Department of Mental Health and Substance Abuse Services, the State Department of Health, or the Department of Human Services as a provider of mental health services in an Office of Personnel Management employment classification of Psychological Assistant or above or Social Worker II or above, or
- b. has been awarded a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field.

For the purpose of this paragraph, "mental health field" means medicine, psychology, counseling and guidance, applied behavioral studies, human relations or social work.

~~20. "Independent" means that the person or persons performing a mental health examination and submitting a report to the court pursuant to the provisions of this title has no financial interests in or other connections to or relationships with a facility in which the child will be placed for inpatient mental health services that would constitute a conflict of interest, and has signed an affidavit to that effect.~~

~~21. "Mental health examination" and "mental health evaluation" means an examination or evaluation of a child by a qualified mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the qualified mental health professional:~~

- ~~a. the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or~~
- ~~b. the child is not a child in need of treatment, and the mental health services, if any, necessary and appropriate for the child.~~

~~22. "Less restrictive alternative to inpatient mental health care and treatment" means and shall include but not be limited to: Outpatient counseling services, including services provided in the home of the child and which may be referred to as "home-based services"; day treatment or day hospitalization services; respite care; foster care; group home care that provides for the delivery of services specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.~~

~~23. "Prescreening mental health evaluation" means a face to face examination of a child by a qualified mental health professional to determine whether the child should be admitted to a hospital or inpatient mental health facility on an emergency psychiatric basis as provided by Section 5 of this act.~~

~~24.~~ 19. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent children.

~~25.~~ 20. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

~~26.~~ 21. "Treatment center" means a facility maintained by the state for the care, education, training, treatment, and rehabilitation of children who are in the custody of the Department and who have been ~~found~~ committed by ~~the~~ a court ~~to be in need of~~ for mental health treatment.

SECTION 7. AMENDATORY 10 O.S. 1981, Section 1102, as last amended by Section 2, Chapter 337, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1102), is amended to read as follows:

Section 1102. A. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Section 1107 of this title, the district court shall have jurisdiction of any child who is or is alleged to be delinquent, in need of supervision, ~~in need of treatment,~~ or deprived, who is found within the county; and of the parent, guardian or legal custodian of said child, regardless of where the parent, guardian or legal custodian is found. When jurisdiction shall have been obtained over a child in need of supervision, ~~a child in need of treatment,~~ or a deprived child, such may be retained until the child becomes eighteen (18) years of age and when jurisdiction shall have been obtained over a delinquent child, jurisdiction may be retained until the child becomes nineteen (19) years of age. For the convenience of the parties and in the interest of justice, a proceeding under this chapter may be transferred to the district court in any other county.

B. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 1107 of this title may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another district court within the state. Any adjudication and disposition made by the court in which said petition is filed shall control over prior orders in regard to the child.

C. The district court in which a petition is filed which alleges that a child is in need of supervision, ~~in need of treatment,~~ or is deprived can issue any temporary order or grant any interlocutory relief authorized by this chapter notwithstanding the fact that another district court within the state has jurisdiction

of the child or has jurisdiction to determine the custody or support of the child.

D. If the district court in which a petition is filed pursuant to either subsection B or subsection C of this section sustains the petition, the district court shall have the jurisdiction to make a final determination on the juvenile petition or to transfer the proceedings to a court having prior jurisdiction over the child. Where the other proceeding is pending in the same judicial district in which the juvenile petition is filed, the chief judge of the judicial district shall determine if the proceedings shall be consolidated and, if consolidated, which judge shall try the issues when the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed.

E. A municipal court, if authorized by the governing body of the municipality, may enter into an agreement with the district court, pursuant to rules promulgated and adopted by the Oklahoma Supreme Court, to assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating municipal ordinances relating to vandalism, shoplifting, and public intoxication. A child under eighteen (18) years of age may be charged and prosecuted for violating such a municipal ordinance provided that the maximum fine which may be imposed shall not exceed the maximum fine authorized by law. When assessing punishment, the court also may require appropriate community service work, not to exceed twenty hours, in lieu of a fine if the product of multiplying the number of hours of community service work by the prevailing minimum wage does not result in a number which exceeds the maximum fine authorized by law, or restitution, or both community service work and restitution. In addition, the court may require the child to receive counseling or other community-based services, as necessary. If a child is prosecuted for an offense in a municipal court, the child shall not be prosecuted for the offense in the

district court. All municipal arrest and prosecution records for cases involving children under eighteen (18) years of age charged with violating municipal ordinances relating to vandalism, shoplifting, or public intoxication shall be kept confidential and shall not be open to public inspection except by order of the court.

F. Funds generated from fines paid pursuant to an agreement between a municipal court and the district court shall be earmarked and used by the municipality to fund local programs which address problems of juvenile crime.

SECTION 8. AMENDATORY 10 O.S. 1981, Section 1103, as last amended by Section 2, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1103), is amended to read as follows:

Section 1103. A. The court may provide by rule who shall make a preliminary inquiry to determine whether the interests of the public or of the child who is within the purview of this chapter require that further court action be taken. Provided, that where intake is to be provided by the Department under contract with the Supreme Court, or under the provision of rules issued by the Supreme Court, the preliminary inquiry as set out herein shall follow the uniform contractual procedures as agreed to by the Supreme Court and the Department. If it is determined that no further action be taken, said person or the court may make such informal adjustment as is practicable without a petition.

B. A petition in a juvenile proceeding may be filed by the district attorney or the person who is authorized to make a preliminary inquiry to determine if further action is necessary. The proceeding shall be entitled "In the matter of \_\_\_\_\_, an alleged (delinquent) (deprived) child or (a child alleged to be in need of supervision) ~~or (a child alleged to be in need of treatment)~~".

C. The petition shall be verified and may be upon information and belief. It shall set forth (1) with particularity facts which

bring the child within the purview of ~~Chapter 51~~ Section 1101 et seq. of this title; (2) the name, age and residence of the child; (3) the names and residences of his parents; (4) the name and residence of his legal guardian, if there be one; (5) the name and residence of the person or persons having custody or control of the child; (6) the name and residence of the nearest known relative, if no parent or guardian can be found; (7) the relief requested; and (8) the specific federal law, state law or municipal ordinance under which the child is charged, and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child under ~~Chapter 51~~ Section 1101 et seq. of this title. If a termination of parental rights is desired, it must be stated in the petition and summons, and if an order for the payment of funds for the care and maintenance of the child is desired, it must be stated in the petition and summons. If any of the facts herein required are not known by the petitioner, the petition shall so state, along with the reasons why said facts are not known to petitioner.

~~C. A petition alleging a child to be a child in need of treatment shall be filed by a district attorney and may be filed by a district attorney only after receipt and review of a report of a mental health examination of the child by an independent qualified mental health professional.~~

D. Nothing in this section shall prevent the filing of a petition alleging a child to be ~~a child in need of treatment and delinquent~~, in need of supervision or deprived.

E. A copy of the petition shall be attached to and delivered with the summons.

SECTION 9. AMENDATORY 10 O.S. 1981, Section 1105, as amended by Section 4, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1105), is amended to read as follows:

Section 1105. ~~A.~~ Service of summons shall be made as provided for service in civil actions or service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. Where the address of the person to be summoned is not known, or if the mailed summons is returned, the court may order that notice of the hearing be published once in a newspaper of general circulation in the county. The court may not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian; provided, however, that the court may not hold the hearing until at least five (5) days after the date of mailing the summons, if the parent is not served within the state, except with the consent of the parent, or if notice is published, until at least ten (10) days after the date of publication; provided, further, that if one or more persons must be served by publication, and if it appears that the court must order the child held in a place of detention in order to meet the requirement of this section with respect to the time for holding a hearing when a party can be served only by publication, the court may advance the date of the hearing, with reasonable notice to the other persons who have been served or are properly and legally notified, to any date that the court determines to be reasonable and may proceed with the action; but an order determining that a child is delinquent or in need of supervision or is deprived shall not become final until thirty (30) days after the date of the publication of the notice. Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

~~B. Whenever a petition alleging a child to be a child in need of treatment is filed and the court has ordered an inpatient mental health examination of the child, the hearing on the petition shall be set for not more than twenty (20) days after the inpatient~~

~~admission of the child to a hospital or other mental health facility.~~

~~1. The report of a mental health examination of the child by an independent qualified mental health professional shall be attached to a petition alleging the child to be a child in need of treatment. If such report is not attached to the petition at the time it is filed, or if the court finds the report to be inadequate to aid the court in the adjudication or disposition of the case, the court shall order an independent mental health examination of the child. A report of the examination shall be submitted to the court prior to a hearing on the petition, and the court may order such other reports as it deems necessary in order to aid the court in the adjudication or disposition of the case.~~

~~2. Any report of a mental health examination of a child alleged to be a child in need of treatment that recommends that the child be found to be eligible for inpatient mental health treatment shall be certified and shall be signed by two qualified mental health professionals, at least one of whom shall be independent as defined by Section 1 of this act.~~

SECTION 10. AMENDATORY 10 O.S. 1981, Section 1107, as last amended by Section 5, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1107), is amended to read as follows:

Section 1107. A. A child may be taken into custody prior to the filing of a petition:

1. By a peace officer, or employee of the court without a court order if the child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

2. Pursuant to an order of the district court issued on the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the court at the time fixed. If detained, such child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court. If no judge be available locally, the person having the child in custody shall immediately report his detention of the child to the presiding judge of the judicial administrative district, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a regional juvenile detention center, beyond the next two (2) judicial days unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in Section 1107.1 of this title. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent or other person appointed by the court, or be

detained pursuant to the provisions of Section 1107.1 of this title in such place as shall be designated by the court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the court, or he shall be taken immediately before a judge of the district court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the court taking the child into custody shall immediately report the fact of the detention of the child to a judge of the district court in the county in which the child was taken into custody. If no judge is available locally, the detention shall be reported immediately to the presiding judge of the judicial administrative district, or if the presiding judge of the judicial administrative district cannot be reached, then to any judge regularly serving within the judicial administrative district. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the court, the court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to subsection B of Section 1104.1 of this title is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent, guardian or custodian of the child shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

E. 1. No child who is alleged or adjudicated to be deprived, delinquent, in need of supervision ~~or in need of treatment~~, or who has been taken into custody as otherwise provided by this title, shall be admitted to a hospital or mental health facility: ~~a.~~ on an emergency psychiatric basis ~~except as provided by subsection F of this section;~~ ~~b.~~ 1. for an inpatient mental health examination ~~except as provided by Section 9 of this act;~~ 1. or ~~c.~~ for inpatient mental health care and treatment except upon a finding by the court that the child is eligible for such services as otherwise provided by ~~Section 7 of this act~~ law.

~~2. Whenever a child is taken into custody as a child in need of treatment, he shall be taken to a shelter, hospital, foster home or~~

~~other appropriate place as designated by the court, or he shall be taken immediately before a judge of the district court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a child in need of treatment without a court order, the peace officer or employee of the court taking the child into custody shall immediately report the fact of the detention of the child to a judge of the district court in the county in which the child was taken into custody. If no judge is available locally, the detention shall be reported immediately to the presiding judge of the judicial administrative district, or if the presiding judge of the judicial administrative district cannot be reached, then to any judge regularly serving within the judicial administrative district. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of any hearing pursuant to this subsection. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the court, the court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The court may release an alleged child in need of treatment from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child or others and the court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to subsection D of Section 1104.1 of this title is warranted. Any protective order of the court pursuant to this subsection for a mental health examination of the child shall be as provided by Section 9 of this act.~~

~~3. Nothing in this subsection or subsection F of this section shall be interpreted to preclude or prohibit the admission of a~~

~~child to a hospital for needed medical care and services, other than mental health treatment or examination.~~

~~F. After a prescreening examination and a determination by a qualified mental health professional that there is reasonable cause to believe that as a result of a demonstrable mental illness there exists an imminent danger that the child will intentionally or unintentionally seriously physically injure himself or another person, a child may be admitted to a hospital or mental health facility on an emergency psychiatric basis. Except upon an order of the court for an inpatient mental health examination of the child as provided by Section 9 of this act, such emergency psychiatric admission shall be for not more than two (2) judicial days, excluding weekends and legal holidays.~~

SECTION 11. AMENDATORY Section 18, Chapter 312, O.S.L. 1982, as last amended by Section 4, Chapter 363, O.S.L. 1989 (10 O.S. Supp. 1990, Section 1107.1), is amended to read as follows:

Section 1107.1 A. When a child is taken into custody pursuant to the provisions of Sections 1101 through 1506 of this title, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public.

1. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days.

2. No child alleged or adjudicated to be deprived, or in need of supervision ~~or in need of treatment~~ shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, or a child in need of supervision, ~~or a child in need of treatment,~~ may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

B. No child may be placed in secure detention unless:

1. the child is an escapee from a correctional facility or community correctional program or placement; or

2. the child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; or

3. the child is seriously assaultive or destructive towards others or himself; or

4. the child is detained for the commission of a crime that would constitute a felony if committed by an adult; or

5. the child is currently charged with a misdemeanor and:

a. is on probation or parole on a prior delinquent offense,

b. is on pre-adjudicatory community supervision,

c. is currently on release status on a prior delinquent offense, or

d. has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings.

C. 1. Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

- a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and
- b. the child is awaiting an initial court appearance, and
- c. the child's initial court appearance is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and
- d. the court of jurisdiction is outside of the Standard Metropolitan Statistical Area as defined by the Bureau of Census, and
- e. there is no existing acceptable alternative placement for the child, and
- f. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Commission for Human Services, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:
  - (1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;
  - (2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and
  - (3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling.

Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile training school or from a Department of Human Services group home from being held in any jail certified by the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a county jail or other adult detention facility an eighteen-year old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

D. Nothing contained in this section shall in any way reduce or eliminate a county's liability as otherwise provided by law for

injury or damages resulting from the placement of a child in a jail, adult lockup, or other adult detention facility.

E. Any juvenile detention facility shall be available for use by any eligible Indian child as that term is defined by the Oklahoma Indian Child Welfare Act providing that the use of the juvenile detention facility meets the requirements of this act. The Indian tribe may contract with any juvenile detention facility for the providing of detention services.

F. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by the Department of Human Services.

SECTION 12. AMENDATORY 10 O.S. 1981, Section 1109, as last amended by Section 6, Chapter 363, O.S.L. 1989 (10 O.S. Supp. 1990, 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 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.

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. The guardian ad litem may be a court-appointed special advocate.

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 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 13. AMENDATORY 10 O.S. 1981, Section 1110, as amended by Section 1, Chapter 179, O.S.L. 1986 (10 O.S. Supp. 1990, Section 1110), is amended to read as follows:

Section 1110. In adjudicatory hearings to determine whether a child is delinquent, in need of supervision, ~~in need of treatment~~ or is deprived, the child informed against, or any person entitled to service of summons, shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on his own motion may call a jury to try any such case. Such jury shall consist of six (6) persons.

SECTION 14. AMENDATORY 10 O.S. 1981, Section 1114, as last amended by Section 6, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1114), is amended to read as follows:

Section 1114. ~~A.~~ If the court finds that the allegations of the petition are supported by the evidence, and that it is in the best interest of the child and the public that ~~he~~ the child be made a ward of the court, the court shall sustain the petition, and shall make an order of adjudication, setting forth whether the child is delinquent, or in need of supervision or deprived and shall adjudge the child as a ward of the court.

~~B. If the court finds the allegations on a petition alleging a child to be a child in need of treatment are supported by clear and convincing evidence, including but not limited to the evidence of a mental health examination of the child by an independent qualified mental health professional pursuant to the provisions of Section 4 of this act, and that it is in the best interest of the child that he be made a ward of the court, the court shall sustain the petition and shall make an order of adjudication. If warranted by the facts in the case, an order of adjudication finding a child to be a child in need of treatment shall not serve to preclude a subsequent order~~

~~of adjudication finding a child to be delinquent, in need of supervision or deprived or to vacate any such order of adjudication previously entered.~~

SECTION 15. AMENDATORY 10 O.S. 1981, Section 1116, as last amended by Section 7, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1116), is amended to read as follows:

Section 1116. A. The following kinds of orders of disposition may be made in respect to wards of the court:

1. The court may place the child on probation or under supervision in his own home, or in the custody of a suitable person elsewhere, upon such conditions as the court shall determine. The court may require the parent or other person to give security by bond, with surety or sureties approved by the court, for compliance with such order.

If it is consistent with the welfare of the child, the child shall be placed with his parent or legal guardian, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to such delinquency, or need of supervision or treatment, or deprivation, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from becoming delinquent, in need of supervision ~~or treatment~~, or deprived, as defined by Section 1101 of this title. Such order shall remain in effect for a period of not more than one (1) year to be specified by the court, and the order may be extended or renewed by the court.

a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived or in need of supervision due to repeated absence from school, the court may order counseling

and treatment for the child and the parents of the child to be provided by the local school district, the county, the Department or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, mental retardation, and hearing and visual impairments and other impediments which could constitute an educational handicap. The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

- b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and his ability to exercise parental control over the behavior of the juvenile.
- c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from foster care to independent living.

No child who has been adjudicated in need of supervision or deprived upon the basis of truancy or noncompliance with the mandatory school attendance law alone may be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child. A deprived

adjudication based upon repeated absence from school shall not constitute a ground for termination of parental rights.

2. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is licensed by the Department or any other state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require.

3. The court may order the child to receive counseling or other community-based services as necessary.

4. The court may commit the child to the custody of the Department; provided, any order adjudicating a child to be delinquent and committing the child to the Department shall be for an indeterminate period of time.

~~5. Whenever, after a hearing on a petition alleging a child to be a child in need of treatment, the court determines by clear and convincing evidence that the child is a child in need of treatment, the court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child until such time as such care and treatment is no longer necessary.~~

~~a. The court shall not find a child adjudicated to be a child in need of treatment to be eligible for inpatient mental health services unless the court finds by clear and convincing evidence, after a~~

~~thorough consideration of less restrictive alternatives to inpatient treatment:~~

~~(1) that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child, or~~

~~(2) that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child;~~

~~b. Whenever the court finds that a child adjudicated to be a child in need of treatment is eligible for inpatient mental health treatment:~~

~~(1) when the child is in the custody of his parent, legal guardian or legal custodian other than the Department of Human Services, the court may authorize such parent, legal guardian or legal custodian to make arrangements for the admission of the child to a public or private mental health facility appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment and may order the Department of Human Services to assist the parent or legal guardian in making said arrangements; or~~

~~(2) when the child is in the custody of the Department of Human Services, the court may authorize the Department to place the child in a mental health facility appropriate for the inpatient treatment needs of the child.~~

~~6. 5.~~ If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or

stepparent, or other adult person living in the home has contributed to the delinquency, need of supervision or treatment, or deprivation of the child, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

~~7.~~ 6. The court may order any child adjudicated a delinquent child for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, to pay a victim compensation assessment in an amount not to exceed that amount specified in Section 142.18 of Title 21 of the Oklahoma Statutes. The court shall forward a copy of the adjudication order to the Crime Victims Compensation Board for purposes of Section 142.11 of Title 21 of the Oklahoma Statutes. Such adjudication order shall be kept confidential by the Board.

~~8.~~ 7. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

8. The court may order any child adjudicated a delinquent child to engage in a term of community service without compensation. The state or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph.

9. In any dispositional order removing a child from the home of the child, the court shall make a determination that reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is

returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.

~~C. Whenever the court finds a child adjudicated to be a child in need of treatment eligible for inpatient mental health treatment pursuant to the provisions of this section and the child is subsequently placed in a hospital or mental health facility for said inpatient treatment, the court shall review the case at least every sixty (60) days or more frequently as directed by the court until the child is discharged from inpatient treatment.~~

~~D.~~ C. The court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the court terminates the rights of a parent and commits the child to an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the court commits the child to the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning said child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate.

~~E.~~ D. No child who has been adjudicated in need of supervision or deprived may be placed in a state training school.

~~F.~~ E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for any said violation unless the charge for which the arrest was made would constitute a felony if the child were an adult; provided, that nothing contained in the above section prohibits the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the district court alleging delinquency as a result of said acts.

~~G.~~ F. If it is consistent with the welfare of the child, the court may require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by Sections 227 and 228 of Title 57 of the Oklahoma Statutes shall apply to community services directed pursuant to this section.

~~H.~~ G. The court may require any child found to be a juvenile delinquent or child in need of supervision, the parents of any child found to be a juvenile delinquent, a child in need of supervision, or a deprived child ~~or a child in need of treatment~~, or both the child and the parents, to reimburse the court fund, in whole or in part, for any disbursements made from the court fund in conjunction with the case, including, but not limited to, court-appointed attorney's fees, expert witness fees, sheriff's fees, witness fees, transcripts and postage. When any parent is financially able but has willfully failed to pay court costs or to reimburse the court fund as ordered by the court or has willfully failed to pay court costs and to reimburse the court fund as ordered by the court, the parent may be held in contempt of court and, upon conviction, shall be punished pursuant to Section 566 of Title 21 of the Oklahoma Statutes. After a judicial determination that the child, the parent of the child, or both such child or parent, are able to pay the costs and to reimburse the court fund or pay the costs and to

reimburse the court fund in the case in installments, the court may order the costs and such reimbursement of the court fund to be paid in installments and shall set the amount and due date of each installment. A parent may be found to be financially able to pay court costs or to reimburse the court fund or to pay court costs and to reimburse the court fund in installments even though the court has previously found the parent indigent.

SECTION 16. AMENDATORY 10 O.S. 1981, Section 1117, as last amended by Section 8, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1117), is amended to read as follows:

Section 1117. A. 1. Whenever the court transfers custody of a child as provided in Section 1116 of this title, the person, institution, agency, or Department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, ordinary medical care, education, discipline for the child, and, in an emergency, to authorize surgery or other extraordinary care. Except for an emergency psychiatric admission pursuant to ~~subsection F of~~ Section ~~5~~ 1107 of this ~~act~~ title, said person, institution, agency or department may:

a.—provide or arrange for the provision of an inpatient mental health examination of such child only pursuant to a court order as provided by Section ~~9~~ 4 of this act, and

b.—provide or arrange for the provision of inpatient mental health care and treatment of such child only after the filing of ~~a petition alleging the child to be a child in need of treatment~~ an application pursuant to Section 5 of this act and a finding by the court that the child ~~is eligible for~~ shall be committed to a facility for inpatient mental health care and treatment.

Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient mental health services, including an outpatient mental health examination, counseling, educational, rehabilitative or other similar services to said child, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule, regulation or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

- a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or
- b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, agency or Department having custody of the child, or
- c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority.

B. The person, institution, agency, or Department having legal custody of a child pursuant to an order of the court shall receive notice of court proceedings regarding the child as provided in Sections 1105 and 1115 of this title and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not

limited to: adjudication, disposition, review of disposition, and termination of parental rights.

SECTION 17. AMENDATORY 10 O.S. 1981, Section 1120, as last amended by Section 9, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1120), is amended to read as follows:

Section 1120. A. After a petition under the provisions of this title has been filed, the court may order the child to be examined and evaluated by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child. The court may order a mental health examination of a child as provided by subsection C of this section.

B. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the court may, after due notice, enter an order therefor, and the expense thereof, when approved by the court, shall be a charge upon the county, but the court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

C. After a prescreening mental health evaluation and upon an application by the district attorney, the court may issue an order for a mental health examination of a child alleged or adjudicated to be a delinquent, in need of supervision, or deprived ~~or in need of treatment,~~ or who has been taken into custody as otherwise provided

by this title, by an independent qualified mental health professional.

1. The court shall order an inpatient mental health examination only after a finding that there exists an imminent danger that the child will seriously physically injure himself or another person and therefore the mental health examination cannot be conducted on an outpatient basis. Such finding shall be based upon clear and convincing evidence and any order of the court for an inpatient mental health examination shall be for not more than ten (10) days.

2. In all other cases, the court shall order the mental health examination of the child to be conducted on an outpatient basis in or near the community in which the child resides at the time of such order.

D. After adjudication and at the request of a judge in any juvenile proceeding, the Department shall investigate the home conditions and environment of the child and the financial ability, occupation and earning capacity of the parent, legal guardian or custodian of the child. Upon request by the court of another state, the Department may conduct a similar investigation.

SECTION 18. AMENDATORY 10 O.S. 1981, Section 1129, as amended by Section 25, Chapter 312, O.S.L. 1982 (10 O.S. Supp. 1990, Section 1129), is amended to read as follows:

Section 1129. ~~Chapter 51~~ Section 1101 et seq. of this title shall be liberally construed, to the end that its purpose may be carried out, to wit:

1. That the care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall not be treated as a criminal.

2. That the public policy of this state is to assure adequate and appropriate care and treatment for any child, to allow for the use of the least restrictive method of treatment consistent with the

treatment needs of the child and, in the case of delinquents, the protection of the public, ~~to provide orderly and reliable procedures for the placement of a child alleged to be a child in need of treatment~~ and to protect the rights of any child placed out of his home pursuant to law.

SECTION 19. AMENDATORY 10 O.S. 1981, Section 1136, as last amended by Section 8, Chapter 238, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1136), is amended to read as follows:

Section 1136. It shall be the responsibility of the Department to provide care for deprived children who are committed to the care of the Department for custody or guardianship. The Department may provide for the care of such children in the home of the child, the home of a relative of the child, in a foster home, group home, transitional living program, independent living program or in any other community-based facility under the jurisdiction or licensure of the Department established for the care of deprived children, except that a deprived child may not be placed in an institution operated by the Department after October 1, 1982. Any deprived children in Department-operated institutions on October 1, 1982, shall be removed from such institutions no later than June 30, 1983. A deprived child ~~found~~ who appears to be ~~a child~~ in need of mental health treatment and eligible for residential care and treatment, as provided in Section 1116 of this title, ~~by the court,~~ may be placed in a Department treatment center or other mental health facility as otherwise provided by law.

SECTION 20. AMENDATORY 10 O.S. 1981, Section 1137, as last amended by Section 9, Chapter 238, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1137), is amended to read as follows:

Section 1137. A. Whenever a child who has been adjudicated by the court as a child in need of supervision has been committed to the Department, the Department may place the child in the home of the child, the home of a relative of the child, foster home, group

home, transitional living program, independent living program, community-based setting, rehabilitative facility or child care facility under the operation of or licensure of the state, or in a state school for the mentally retarded if eligible for admission thereto. No child in need of supervision shall be placed in a Department-operated institution, other than a rehabilitative facility, after October 1, 1982. Any children in need of supervision in Department-operated institutions on October 1, 1982, shall be removed from such institutions no later than June 30, 1983.

B. The Department may establish and maintain one or more rehabilitative facilities to be used exclusively for the custody of children in need of supervision. Each such facility shall be, primarily, a nonsecure facility having as its primary purpose the rehabilitation of children adjudicated to be in need of supervision. Such facility shall have a bed capacity for no more than twenty children, and shall minimize the institutional atmosphere and prepare the child for reintegration into the community. Provided however, that such facility may be designed and operated as a secure facility used exclusively for children in need of supervision whom the court has specifically found to be so unmanageable, ungovernable and antisocial that no other reasonable alternative exists for treatment or restraint other than placement in such a secure facility. Such facility shall not rely on locked rooms, fences, or physical restraints.

C. A child in need of supervision who ~~has been found~~ appears to be ~~a child~~ in need of mental health treatment and to be eligible for residential care and treatment, as provided in Section 1116 of this title, ~~by the court,~~ may be placed in a Department-operated treatment center or other mental health facility as otherwise provided by law.

SECTION 21. AMENDATORY 10 O.S. 1981, Section 1138, as last amended by Section 10, Chapter 238, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1138), is amended to read as follows:

Section 1138. A. It is the intent of the Legislature of this state to provide for the creation of all reasonable means and methods that can be established by a state for the prevention of delinquency and for the care and rehabilitation of delinquent children. It is further the intent of the Legislature that this state, through the Department of Human Services, establish, maintain and continuously refine and develop a balanced and comprehensive state program for children who are potentially delinquent or are delinquent.

B. Whenever a child who has been adjudicated by the court as a delinquent child has been committed to the Department, the Department may:

1. Place the child in a state training school or other institution or facility maintained by the state for delinquent children if the child has:

- a. exhibited seriously violent, aggressive or assaultive behavior; or
- b. committed a serious felony constituting violent, aggressive and assaultive behavior; or
- c. habitually committed serious delinquent acts; or
- d. committed multiple serious delinquent acts;

to the extent that it is necessary for the protection of the public;  
or

2. Place the child in a facility maintained by the state for children, or in a foster home, group home, transitional living program or community residential center; or

3. Allow the child his liberty, under supervision, in an independent living program; or

4. Allow the child his liberty, under supervision, either immediately or after a period in one of the facilities referred to in paragraphs 1 and 2 of this subsection; or

5. Place the child in a state school for mentally retarded, if the child is eligible for admission thereto; or

6. Place the child in any licensed private facility deemed by the Department to be in the best interest of the child; or

7. Place the child in a Department-operated treatment center or other mental health facility as provided by law if the delinquent child ~~has been found~~ appears to be in need of require mental health treatment and ~~to be~~ is eligible for residential care and treatment, as provided in Section 1116 of this title, by ~~the~~ court order.

SECTION 22. AMENDATORY 10 O.S. 1981, Section 1140, as amended by Section 30, Chapter 312, O.S.L. 1982 (10 O.S. Supp. 1990, Section 1140), is amended to read as follows:

Section 1140. If a child who has been adjudicated as a delinquent, a child in need of supervision, or deprived, and who has been committed to the Department becomes unmanageable and uncontrollable while in the legal custody of the Department, the Department may return the child to the court having original jurisdiction for further disposition or may provide information to the district attorney and request the filing of a petition or may file an application alleging the child to be delinquent or in need of mental health treatment, if such petition or application is warranted by the facts in the case.

SECTION 23. AMENDATORY 10 O.S. 1981, Section 1404, as last amended by Section 11, Chapter 238, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1404), is amended to read as follows:

Section 1404. A. In addition to the other powers and duties prescribed by law, the Department shall have the following duties and powers with regard to children placed in Department-operated institutions and facilities:

1. Provide for the care, education, training, treatment and rehabilitation of children who are placed in the institutions. The Department may give assistance to local school districts in providing an education to such children, may supplement such education, and may provide facilities for such purposes. It shall be the duty of the Department to assure that children in the aforesaid institutions receive educational services which will stress basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science and vocational-technical education; and

2. Transfer from a children's institution to another facility under the jurisdiction of the Department, a child who has been adjudicated delinquent, if the Department believes it advisable to do so; transfer from a facility for children in need of supervision or deprived children to another such facility, a child who has been adjudicated in need of supervision or deprived, provided that such transfer is consistent with the treatment needs of the child and will further the goal of returning the child to his own home; transfer from a children's institution to a state school for the mentally retarded, any child eligible for admission thereto, if the child appears to be in need of the care and treatment provided at such school; transfer from a facility for delinquent, in need of supervision, or deprived children to a Department-operated treatment center any child ~~found by the court to be a child in need of treatment and~~ eligible for commitment for residential mental health care and treatment as provided in Section 1116 of this title pursuant to court order as provided in Section 5 of this act; and

3. Release on parole a child previously adjudicated to be delinquent, subject to terms and conditions specified by the Department, whenever the Department determines that such release will not be detrimental to society and that the child is probably ready to be returned to his community and revoke said parole for

violation of the specified terms or conditions of parole pursuant to the provisions of this section and the rules, regulations and procedures established by the Department for such revocation; and

4. Release any child from a children's institution for placement in a foster home, group home, transitional living program, independent living program or other community-based facility or program subject to terms and conditions specified by the Department; and

5. Provide parole services for children released on parole from children's institutions, and aftercare services for children discharged from children's institutions or facilities. Persons designated as Juvenile Parole Officers by the Department shall have the power to serve process and to apprehend and detain juveniles and make arrests in accordance with the laws of the state.

B. The transfer of a child from a nonsecure placement to a secure placement shall be subject to an administrative transfer hearing and any revocation of parole shall be subject to a parole revocation hearing.

1. In any administrative transfer or parole revocation proceeding the following minimum standards shall apply:

- a. the child shall have the right to notice of the proposed transfer or parole revocation hearing and the alleged violation of administrative or parole rules on which the proposed transfer or parole revocation is based; and
- b. the child shall have the right to representation by an attorney; and
- c. the child shall have the right to present evidence in his own behalf; and
- d. the child shall have a right to bail, except that said right to bail shall not be construed to require that a child who is in residence in a Department-operated

institution or other facility at the time of an alleged violation leading to an administrative transfer proceeding be released from such institution or facility.

2. The situs of said hearings shall be the county in which the alleged violation of administrative or parole rules occurs. The judge having juvenile docket jurisdiction in said county shall aid the administrative transfer or parole revocation process of the Department by:

- a. determining eligibility for and amount of bail; and
- b. deciding any intermediate custody or placement issue; and
- c. if legal counsel for the child has not otherwise been obtained, appointing legal counsel for the child and fixing the amount of his compensation. Said judge shall also determine if the child is eligible for free legal services. If the child is not eligible for free legal services, the court shall order the parents or legal guardian of the child to pay for such services.

3. If the child is eligible for free legal services, the district court fund of the county where the order committing the child to the custody of the Department was issued shall pay for all legal expenses incurred on behalf of the child pursuant to the provisions of this section. If the hearing takes place in a county other than the county from which said order was issued, the court clerk of the county in which the hearing is held shall bill the district court fund of the county where said order was issued for said legal expenses.

C. The Department may participate in federal programs relating to delinquent children, children in need of supervision, or deprived children, ~~or children in need of treatment~~ or institutions and

services for such children; and apply for, receive, use and administer federal funds for such purposes.

D. Receive interest earnings on the investment by the State Treasurer of monies, to be credited to an agency special account, for the benefit of and held in trust for persons placed in the custody of the Department or in residence at institutions maintained by the Department.

SECTION 24. AMENDATORY 56 O.S. 1981, Section 309, as renumbered by Section 48, Chapter 312, O.S.L. 1982, and as amended by Section 14, Chapter 51, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1413), is amended to read as follows:

Section 1413. The Commission is authorized to transfer any pupil or pupils from any institution referred to in Section 1406 of this title to any other of such institutions, or to any institution within the Department of Mental Health and Substance Abuse Services, with the consent of the Director of Mental Health and Substance Abuse Services ~~when it determines that such pupil or pupils are in need of treatment at such institution~~ upon the order of the court, as required by Section 5 of this act.

SECTION 25. AMENDATORY Section 1, Chapter 250, O.S.L. 1983, as last amended by Section 5, Chapter 181, O.S.L. 1987 (28 O.S. Supp. 1990, Section 162), is amended to read as follows:

Section 162. A. The clerks of the courts shall collect as costs in every juvenile delinquency, child in need of supervision, ~~child in need of treatment,~~ or deprived case in which the juvenile is adjudicated, irrespective of whether or not the sentence is deferred, or in every such case in which a petition is filed at the demand of the parents of a juvenile and said petition is subsequently dismissed prior to adjudication at said parents' request, the following flat charge and no more, except for the charges provided for in this section, which fee shall cover

docketing of the case, filing of all papers, issuance of process, warrants and orders, and other services to date of judgment:

For each case where one or more juveniles are adjudicated deprived.....\$37.00

For each juvenile who is certified to stand trial as an adult.....\$62.00

In each juvenile case wherein parental rights are terminated.....\$37.00

For each juvenile adjudicated in need of supervision ~~or~~ ~~in need of treatment~~.....\$37.00

For each juvenile adjudicated for an offense which would be a misdemeanor if committed by an adult, including violation of any traffic law, whether charged individually or conjointly with others.....\$37.00

For each juvenile adjudicated for an offense which would be a felony if committed by an adult, whether charged individually or conjointly with others.....\$62.00

For the services of a court reporter at each trial held in the case.....\$20.00

When a jury is requested.....\$30.00

A sheriff's fee for serving or endeavoring to serve all writs, warrants, orders, process, commands, or notices or pursuing any fugitive from justice..... \$20.00

or mileage as

established

by Oklahoma Statutes,  
whichever is greater.

B. Such costs shall be levied against the juvenile, the parent, or both, but shall not be levied against the legal guardian or any state or private agency having custody of any juvenile subject to such proceedings.

C. Prior to adjudication, parties in juvenile delinquency, child in need of supervision, ~~child in need of treatment~~, and deprived cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund, except the sheriff's fee, when collected, shall be transferred to the general fund of the county in which service is made or attempted to be made.

D. The clerk of the district court shall charge the sum of Thirty Dollars (\$30.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

E. Fees and costs collected in juvenile cases may be withdrawn from the court fund and used for operations of the juvenile bureaus, in counties wherein a statutory juvenile bureau is in operation, upon approval by the Chief Justice of the Oklahoma Supreme Court.

F. In those seventy-four counties in which court services are provided by contract between the Oklahoma Supreme Court and the Department of Human Services, funds received from court costs in juvenile cases may be withdrawn from the court fund and paid to the Department of Human Services upon approval by the Chief Justice of the Oklahoma Supreme Court. Said funds are to be expended by the Department of Human Services to supplement community-based programs, such as juvenile offender victim restitution work programs, youth services programs, day treatment programs, group home services, and detention services. Specific annual training of Department workers in community-based services providing the above court-related

services is also to be included for expenditure of funds received from court costs in juvenile cases by the Department of Human Services.

SECTION 26. AMENDATORY 43A O.S. 1981, Section 50, as renumbered by Section 103, Chapter 103, O.S.L. 1986, and as last amended by Section 13, Chapter 302, O.S.L. 1990 (43A O.S. Supp. 1990, Section 1-104), is amended to read as follows:

Section 1-104. A. The Oklahoma Legislature hereby declares that the public policy of this state is to assure adequate treatment of persons alleged to be in need of mental health treatment or treatment for drug or alcohol abuse, to establish behavioral standards for determination of dangerousness of persons in need of such treatment, to allow for the use of the least restrictive alternative in the determination of the method of treatment, to provide orderly and reliable procedures for commitment of persons alleged to be in need of mental health treatment consistent with due process of law, and to protect the rights of patients hospitalized pursuant to law.

B. It is the intent of the Legislature that:

1. Mental health services supported in whole or in part with public funds shall be provided in the manner most likely to preserve, support and strengthen the family of the child and to assist the child and his family; and

2. Children needing mental health services shall, to the maximum extent possible, receive those services on an outpatient basis and that inpatient mental health evaluation and treatment services shall be utilized only as necessary to preserve the health or safety of the child or, in the case of a child who as a result of a demonstrable mental illness can be expected to imminently intentionally or unintentionally seriously and physically injure another person, for the protection of others.

SECTION 27. AMENDATORY 43A O.S. 1981, Section 99, as amended by Section 7, Chapter 103, O.S.L. 1986, and as renumbered by Section 103, Chapter 103, O.S.L. 1986 (43A O.S. Supp. 1990, Section 1-108), is amended to read as follows:

Section 1-108. Anyone in custody as a person in need of mental health treatment, pursuant to the provisions of the Mental Health Law, is entitled to a writ of habeas corpus, upon a proper application made by him or some relative or friend in his behalf pursuant to the provisions of Sections 1331 through 1355 of Title 12 of the Oklahoma Statutes. Upon the return of such writ, the fact of his mental illness shall be inquired into and determined. Notice of hearing on said writ must be given to the guardian of such patient, if one has been appointed, to the person who applied for the original commitment and to such other persons as the court may direct. The medical or other history of the patient, as it appears in the institutional record, shall be given in evidence, and the superintendent of the institution wherein such person is held in custody, and any proper person, shall be sworn touching the condition of such person.

The superintendent shall make available for examination by physicians selected by the person seeking the writ, the patient whose freedom is sought by writ of habeas corpus. Any evidence, including evidence adduced in any previous habeas corpus proceedings, touching upon the mental condition of the patient shall be admitted in evidence.

SECTION 28. AMENDATORY Section 16, Chapter 302, O.S.L. 1990 (43A O.S. Supp. 1990, Section 8-202), is amended to read as follows:

Section 8-202. A. A child fourteen (14) years of age or older who has been admitted or accepted for admission to a mental health facility for inpatient mental health treatment pursuant to Section ~~15~~ 8-201 of this ~~act~~ title, or the next friend of such child, may

object to such admission pursuant to the requirements of this section. For the purposes of this section, "next friend" means a relative of the child or other person authorized to act on behalf of the child, including but not limited to an employee of the Department of Human Services, the Department of Mental Health and Substance Abuse Services, a volunteer with a court-appointed special advocate organization, or other person designated by the court.

1. Whenever a child fourteen (14) years of age or older who has been admitted to a mental health facility for inpatient mental health treatment notifies the facility of his desire to object to such admission, the facility shall without undue delay assist the child in properly filing ~~such~~ an objection with the court.

2. An objection to inpatient treatment shall be made in writing in such form and filed in such manner as designated by the court.

B. Upon the filing of an objection to an admission for inpatient mental health treatment by a child or the next friend of a child the court shall:

1. If the child is not represented by counsel, appoint an attorney to represent the child. An attorney so appointed shall consult with the child at least one (1) day prior to the date set for ~~the~~ hearing the objection;

2. Set a date for a hearing on the objection. Said date shall be not more than five (5) days from the date of the filing of the objection, excluding weekends and legal holidays;

3. Cause notice of the date, time, place and purpose of the hearing to be sent to the child, the parents or legal guardian of the child, the person in charge of the mental health facility and, if other than the child, the person filing the objection. Said notice shall be delivered at least one (1) day prior to the date set for the hearing.

C. 1. After a hearing, the court shall sustain or dismiss the objection to admission.

2. The court shall sustain the objection unless it is shown by clear and convincing evidence, including the evidence of a licensed mental health professional, that the child is ~~a child~~ in need of mental health treatment ~~as defined by Section 1101 of Title 10 of the Oklahoma Statutes~~ and:

- a. that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child, or
- b. after a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child.

D. Whenever, pursuant to the provisions of subsection C of this section, the court dismisses an objection to admission for inpatient mental health treatment, the court shall set the matter for review not more than three (3) months from the date of dismissal and shall continue to review the matter at intervals of not more than three (3) months until the child is discharged from inpatient mental health treatment.

E. An order of the court sustaining the objection of a child to inpatient mental health evaluation or treatment as provided by this section shall not relieve the parent, legal guardian or legal custodian admitting the child to the mental health facility of the liability for the costs of services provided to the child.

F. Nothing in this section shall prohibit or preclude the filing of a writ of habeas corpus.

SECTION 29. AMENDATORY Section 17, Chapter 302, O.S.L. 1990 (43A O.S. Supp. 1990, Section 8-203), is amended to read as follows:

Section 8-203. ~~A.~~ Except as provided in this section, a mental health facility shall not detain a child admitted for inpatient mental health evaluation or treatment pursuant to Section ~~15~~ 8-201 of this ~~act~~ title for more than three (3) days, excluding weekends and legal holidays, after a parent or legal guardian of the child gives written notice of his intent to terminate the inpatient services and remove the child from the facility.

B. If, after receipt of a notice as provided by subsection A of this section, the person in charge of the mental health facility or other person authorized by the person in charge of the facility to make such determination, determines that the condition of the child is such that the child should remain in the mental health facility, the person in charge of the facility or his designee may ~~request the district attorney to file a petition alleging the child to be a child in need of treatment~~ file an application for commitment of the child pursuant to the provisions of Title 10 of the Oklahoma Statutes Section 5 of this act within three (3) days after the receipt of said notice, excluding weekends and legal holidays. The facility may detain and treat the child pending a hearing on the application.

SECTION 30. AMENDATORY Section 26, Chapter 338, O.S.L. 1982, as renumbered by Section 34, Chapter 255, O.S.L. 1986, and as last amended by Section 1, Chapter 160, O.S.L. 1989 (74 O.S. Supp. 1990, Section 4243), is amended to read as follows:

Section 4243. A. No state agency shall:

1. Enter into any contract with an employee of the agency, or with a business in which an employee holds a substantial financial interest, unless the contract is made after public notice by the agency and compliance with competitive bidding procedures. This paragraph shall not apply to a contract of employment with the state;

2. Enter into a contract with or make any ruling or take any action in favor of any person or business which is represented before such agency by a former state employee who, while a state employee, participated substantially in the particular matter before the agency; or

3. Purchase any real property from any employee of said state agency or from any person who within eighteen (18) months prior to such purchase held such position with the state government, unless the property is acquired either by condemnation proceedings or the price to be paid for such property is approved in writing by the appointing authority of the agency acquiring such property and by the Governor.

B. 1. The Department of Human Services is authorized to contract with qualified former state employees, or the spouses of state employees, or other relatives of state employees, for the purpose of providing direct care or treatment services to clients of the Department who are mentally retarded or have other developmental disabilities or are delinquent, children in need of supervision, ~~or~~ ~~in need of treatment,~~ or deprived. Provided, however, that rates of payment and other terms and conditions of contracts entered into pursuant to this section shall be established by the Commission for Human Services and shall be no more favorable than contracts for such services with persons who were not employed by the Department of Human Services nor related to an individual employed by the Department of Human Services.

2. A state employee terminating state employment to provide direct care or treatment services to clients of the Department who are mentally retarded or have developmental disabilities, are delinquent, children in need of supervision, ~~or in need of treatment,~~ or deprived may not return to state employment for a period of one hundred eighty (180) days after date of termination from contracts with the Department of Human Services for direct care

or treatment services to clients of the Department who are mentally retarded or have developmental disabilities or are delinquent, children in need of supervision, ~~or in need of treatment,~~ or deprived.

C. Notwithstanding provisions to the contrary, the Department of Human Services is authorized to employ or contract with personnel of the University of Oklahoma Health Sciences Center, directly or indirectly, to obtain professional services for the Oklahoma Medical Center or clients of other programs administered by the Department of Human Services.

D. Notwithstanding provisions to the contrary, the Department of Human Services is authorized to contract with qualified state employees, or the spouses of state employees, or other relatives of state employees, for the purpose of providing foster care, respite care, and attendant services to children in the custody of the Department.

SECTION 31. This act shall become effective January 1, 1992.

43-1-5197

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