

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1934

By: Paulk

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 130.7, 620.6, 1101, as last amended by Section 1, Chapter 342, O.S.L. 1993, 1102, as last amended by Section 2, Chapter 342, O.S.L. 1993, 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993, 1112, as amended by Section 7, Chapter 342, O.S.L. 1993, 1125.1, as amended by Section 1, Chapter 306, O.S.L. 1993, 1125.2, as last amended by Section 2, Chapter 306, O.S.L. 1993, Section 3, Chapter 306, O.S.L. 1993, 1139, as last amended by Section 9, Chapter 342, O.S.L. 1993, and 1160.2, as amended by Section 12, Chapter 299, O.S.L. 1992 (10 O.S. Supp. 1993, Sections 1101, 1102, 1104.2, 1112, 1125.1, 1125.2, 1125.2A, 1139 and 1160.2), which relate to certification and reverse certification of certain children; providing for expungement of certain records under certain conditions; modifying definition; modifying the age for reverse certification; eliminating conditions and providing prioritized guidelines for certification; modifying age for jail separation purposes, transferal jurisdiction in municipal court, confidentiality of records, certain inspection of certain records, disclosure of certain records, discharge and retention by the Department of Human Services, and participation in the Serious and Habitual Juvenile Offender Program; creating the Youthful Offender Sentencing Program; stating purpose; defining term; authorizing custody of certain youthful offenders to be placed with the Office of Juvenile Justice; authorizing certain dispositional orders; amending 51 O.S. 1991, Section 24A.8, which relates to the Oklahoma Open Records Act; exempting certain records from public inspection; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 130.7, is amended to read as follows:

Section 130.7 No child shall be confined in any police station, prison, jail or lockup, nor be transferred or detained in any place where such child can come in contact or communication

with any adult convicted of a crime, or under arrest and charged with a crime. Provided further that any ~~male person sixteen (16)~~ fourteen (14) or ~~seventeen (17)~~ fifteen (15) years of age who may be in the custody of any peace officer or detained or confined in any police station, jail, or lockup, shall not be permitted to come in contact with, and shall be kept separate from, any person ~~eighteen (18)~~ sixteen (16) years of age or older convicted of a crime or under arrest and charged with a crime.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 620.6, is amended to read as follows:

Section 620.6 A. The task force established pursuant to Section 620.2 of ~~Title 10 of the Oklahoma Statutes~~ this title, with the cooperation and assistance of the Serious and Habitual Juvenile Offender Program Implementation Task Force, shall prepare proposed guidelines and the form and content of proposed interagency agreements for the inspection, release, disclosure, sealing and expungement of information contained in the records defined by Section ~~9~~ 1125 of this ~~act~~ title. Provided however, no such information shall be expunged until such person attains the age of twenty-three (23) and has not been charged with an offense which would merit a criminal record or a criminal juvenile record. After attaining the age of twenty-three (23) and not having been charged with an offense which would merit a criminal record or criminal juvenile record, any mention of the accused person shall be removed from public record.

Said guidelines shall:

1. Be in compliance with applicable state and federal laws providing for the confidentiality of records and information; and
2. Provide for the inspection, release or disclosure of only the information necessary and appropriate, and only to the extent necessary, for the purpose for which such inspection, release or disclosure is made.

B. On or before July 1, 1993, the agencies listed in subsection A of Section 620.3 of ~~Title 10 of the Oklahoma Statutes~~ this title and the agencies comprising the juvenile justice system as defined by Section ~~2~~ 1160.2 of this ~~act~~ title shall, and the

agencies comprising the children and youth service system as defined by Section 600 of ~~Title 10 of the Oklahoma Statutes~~ this title may:

1. Adopt rules, policies, procedures, standards, protocols and guidelines, as appropriate, for the inspection, release, disclosure, sealing and expungement of confidential records in accordance with the proposed guidelines prepared pursuant to subsection A of this section; and

2. Enter into contracts or interagency agreements under the Interlocal Cooperation Act for the sharing or disclosure of confidential information in accordance with said rules, policies, procedures, standards, protocols and guidelines.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1101, as last amended by Section 1, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, 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 for purpose of being declared by the court as neglected, deprived, in need of supervision or in need of mental health treatment, or a person under sixteen (16) years of age charged with a criminal offense, except for any person ~~sixteen (16)~~ fourteen (14) or ~~seventeen (17)~~ fifteen (15) 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)~~ sixteen (16) 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 under sixteen (16) years of age who:

- a. has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, any provision of the Oklahoma Wildlife

Conservation Code, Section 1-101 et seq. of Title 29 of the Oklahoma Statutes, or any lawful order of the court made pursuant to the provisions of Sections 1101 through 1505 of this title, or

- b. has habitually violated traffic laws or traffic ordinances;

3. "Child in need of supervision" means a child under eighteen (18) years of age 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 under eighteen (18) years of age:

- 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 1505 of this title. The phrase dependent and neglected shall be deemed to mean deprived;

5. "Child in need of mental health treatment" means a child under eighteen (18) years of age in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes;

6. "Handicapped child" means any child under eighteen (18) years of age 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. "Department" means the Department of Human Services;

8. "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. "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. "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. "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. "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. "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, transitional living, independent living and other rehabilitative services;

14. "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. "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. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program;

17. "Independent living program" means a program designed to assist a child to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

18. "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;

19. "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;

20. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

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

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

23. "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 by the court to be in need of treatment.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1104.2), is amended to read as follows:

Section 1104.2 A. Any person ~~sixteen (16)~~ fourteen (14) or ~~seventeen (17)~~ fifteen (15) years of age who is charged with murder, kidnapping, robbery with a dangerous weapon, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree after three or more adjudications for committing either burglary in the first degree or burglary in the second degree, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, nonconsensual sodomy, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous

substance, shall be considered as an adult. Upon the arrest and detention, such ~~sixteen- or seventeen-year-old~~ fourteen- or fifteen-year-old accused shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are ~~eighteen (18)~~ sixteen (16) years of age or over.

B. 1. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

C. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

D. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child to the juvenile

division of the district court, then all adult court records relative to the accused person and this charge shall not be expunged ~~and~~ until such person attains the age of twenty-three (23) and has not been charged with an offense which would merit a criminal record or a criminal juvenile record. After attaining the age of twenty-three (23) and not having been charged with an offense which would merit a criminal record or a criminal juvenile record, any mention of the accused person shall be removed from public record.

E. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection D of this section shall be a final order, appealable when entered.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 1102, as last amended by Section 2, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1102), is amended to read as follows:

Section 1102. A. 1. 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 of the county in which a child:

- a. resides,
- b. is found, or
- c. was abused, neglected or deprived or found to be in need of supervision,

shall have jurisdiction of any child who is or is alleged to be abused, neglected or deprived or in need of supervision and shall have jurisdiction of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless of where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall have jurisdiction of any other adult person living in the home of such child. For any child who is or is alleged to be delinquent, the district court of the county where the cause of action arose shall have jurisdiction of the child and of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall

have jurisdiction of any other adult person living in the home of such child.

2. When jurisdiction shall have been obtained over a child who is or is alleged to be in need of supervision 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 child who is or is alleged to be a delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion or motion by the Department, as provided in subsection B of Section 1139 of this title. 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 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 to assume jurisdiction of cases involving children under ~~eighteen (18)~~ sixteen (16) years of age charged with violating municipal ordinances relating to vandalism, shoplifting, trespassing, assault, battery, assault and battery, truancy, curfews, possession of nonintoxicating beverages as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, possession of alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes, disorderly conduct and public intoxication. A child under ~~eighteen (18)~~ sixteen (16) 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)~~ sixteen (16) years of age charged with violating municipal ordinances relating to vandalism, shoplifting, trespassing, assault, battery, assault and battery, truancy, curfews, possession of nonintoxicating beverages as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, possession of alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes, disorderly conduct or public intoxication shall be kept confidential and shall not be open to public inspection

except by order of the court or as otherwise provided by Sections 1125 through 1125.4 of this title and Section 620.6 of this title.

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. Such earmarked funds shall not be used for any administrative costs of the municipal court other than administrative costs for the programs provided for in this subsection.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1112, as amended by Section 7, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1112), is amended to read as follows:

Section 1112. A. Except as otherwise provided, a child who is charged with having violated any state statute or municipal ordinance other than those enumerated in Section 1104.2 of this title, shall not be tried in a criminal action but in a juvenile proceeding. If, during the pendency of a criminal or quasi-criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court or municipal court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the district court. The division making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division. However, nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.

B. Except as otherwise provided by law, if a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult, the court on its own motion or at the request of the district attorney shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to

the complaint. If the court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine ~~the prospects for reasonable rehabilitation of the child~~ if the child should be held accountable for his acts as if he were an adult if he should be found to have committed the alleged act or omission.

~~Consideration shall be given to~~ The court shall give consideration to the following guidelines listed in order of importance:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;

3. The sophistication and maturity of the juvenile and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

4. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;

5. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

6. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After such investigation and hearing, the court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify that such child shall be held accountable for his acts as if he were an adult and shall be

held for proper criminal proceedings for the specific offense charged, by any other division of the court which would have trial jurisdiction of such offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of such certification, unless stayed pending appeal, the court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

C. Prior to the entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, said child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are ~~eighteen (18)~~ sixteen (16) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of adjudication, the child becomes ~~eighteen (18)~~ sixteen (16) years of age, the child may be detained in a county jail or released on bail. If a child is certified to stand trial as an adult, the court shall make every effort to avoid duplication of the adult preliminary hearing and the prosecutorial hearing in the juvenile certification process. The parties may jointly stipulate to the court that the record for the prosecutorial merit hearing in the juvenile proceeding be used for all or part of the preliminary hearing.

D. Any child who has been certified to stand trial as an adult pursuant to any certification procedure provided by law and

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is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings.

E. An order either certifying a person as a child pursuant to subsection B of this section or denying such certification shall be a final order, appealable when entered.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 1125.1, as amended by Section 1, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1125.1), is amended to read as follows:

Section 1125.1 A. Except as provided by this section and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

B. Except as authorized by Sections 620.6 and 1125 through 1125.4 of this title and except as otherwise specifically provided by state and federal laws pertaining to the confidentiality of records and information and the inspection, release, disclosure, correction or expungement of such information, including but not limited to state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court.

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

1. Any order authorizing the disclosure, release or inspection of said records pursuant to this subsection may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

2. Upon the filing of a petition for an order of the court pursuant to this section, the court shall set a date for a hearing and shall provide for reasonable notice to the agency holding the records and the person who is the subject of the record if said person is ~~eighteen (18) years of age or older~~ not a child as defined in Section 1101 of this title or to the parents of a child ~~less than age eighteen (18)~~ as defined in Section 1101 of this title who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The hearing may be closed at the court's discretion.

3. The Department of Human Services shall not be required to produce confidential records or information listed in subsection A of this section pursuant to a subpoena duces tecum issued in a divorce or custody action except upon the filing of a petition as required by this subsection.

D. Any agency or person may seek an order from the juvenile court prohibiting the release of information subject to disclosure without an order of the court pursuant to Sections 620.6 and 1125 through 1125.4 of this title. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

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

1. Information included in the records listed in subsection A of this section may be entered in and maintained in the Juvenile

Justice Information System and other automated information systems related to services to children and youth; and

2. Said information systems may be accessed by participating agencies as defined by subsection B of Section 1125 of this title.

F. Nothing in Sections 620.6 and 1125 through 1125.4 of this title shall be construed as:

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

2. Authorizing the disclosure of information required to be kept confidential by Sections 55.1, 57, 60.17 or 60.29 of this title;

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

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

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

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

7. Prohibiting the person or agency conducting a preliminary inquiry relating to an alleged delinquent act as authorized by Section 1103 of this title from providing information, as to the disposition of the matter by the district attorney, to the person or agency which referred the matter, including but not limited to whether a petition was filed or an alternative action taken, and the basis for such and the terms of any agreement entered into by

the child for payment of restitution, including but not limited to community services.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 1125.2, as last amended by Section 2, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1125.2), is amended to read as follows:

Section 1125.2 A. Juvenile court records may be inspected, and their contents shall be disclosed, without a court order to the following upon showing of proper credentials:

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and court-appointed special advocates;

2. Members of review boards established pursuant to Sections 1115.2, 1116.2, 1116.6 and 1150.2 of this title. In addition to juvenile court records, members of such review boards may inspect, without a court order, information including but not be limited to:

- a. psychological and medical records,
- b. placement history and information, including the names and addresses of foster parents,
- c. family assessments,
- d. treatment or service plans, and
- e. school records;

3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children;

4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or representing a child pursuant to subsection B of Section 846 of Title 21 of the Oklahoma Statutes. Said attorney may also access other records listed in subsection A of Section 1125.1 of this title for use in the legal representation of the child;

5. Employees of juvenile bureaus established by Section 1201 of this title in the course of their official duties pursuant to

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this title, and employees of the Department of Human Services in the course of their official duties pursuant to this title and Title 56 of the Oklahoma Statutes;

6. Employees of a law enforcement agency in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under ~~eighteen (18)~~ sixteen (16) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation; provided, records pertaining to any alleged or adjudicated abuse or neglect of the person shall not be inspected or disclosed;

8. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

9. The Department of Human Services or other public or private agency or individual having court-ordered custody or custody pursuant to Department of Human Services placement of the child who is the subject of the record;

10. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child; and

11. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act, Section 40 et seq. of this title; provided such Indian tribe, in the course of its official duties, is:

- a. investigating a report of known or suspected child abuse or neglect or crimes against children or for

- the purpose of determining whether to place a child in protective custody, or
- b. providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services, or
 - c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes under this subsection shall include all case records, reports, and documents as defined in Section 1125 of this title.

B. In accordance with the rules adopted for such purpose pursuant to the Serious and Habitual Juvenile Offender Act, and Section 620.6 of this title, the records listed in subsection A of Section 1125.1 of this title may be inspected and their contents disclosed without a court order to the following:

1. Participating agencies as defined by Section 1125 of this title;
2. The following, provided that the inspection of records and disclosure authorized by this paragraph may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure:
 - a. pursuant to the provisions of this title, a person, agency, hospital or clinic authorized or directed by the court or the Department of Human Services to care for, treat, examine, evaluate or supervise a child or to treat, examine, or evaluate the parent, legal guardian or other adult person living in the home of the child,
 - b. a legally recognized school that is not a participating agency in which the child who is the subject of the record is currently enrolled, and

c. individuals or agencies engaged in legitimate research for educational, scientific or public purposes or for the purpose of an audit authorized by law. No information identifying the subjects of the records shall be made available or disclosed unless it is essential to the research or audit purpose; and

3. The chairman of any standing or special committee of the Legislature where a subpoena, authorized by law, has been issued by the committee requesting the records.

C. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for commercial, political or any other unauthorized purpose.

SECTION 9. AMENDATORY Section 3, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1125.2A), is amended to read as follows:

Section 1125.2A A. Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed without a court order to the following upon showing of proper credentials:

1. The court having the child currently before it in any proceeding pursuant to Title 10 of the Oklahoma Statutes, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, court-appointed special advocates, and members of review boards established pursuant to Section 1150.2 of this title;

2. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes or the prosecution of crimes against children;

3. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of Title 10 of the Oklahoma Statutes or representing a child pursuant to subsection B of Section 846 of Title 21 of the Oklahoma Statutes. Said attorney may also access other records listed in subsection A of Section 1125.1 of this title for use in the legal representation of the child;

4. Employees of juvenile bureaus established by Section 1201 of Title 10 of the Oklahoma Statutes in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes;

5. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or federally recognized Indian tribe in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

6. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under ~~eighteen (18)~~ sixteen (16) years of age. Records or information disclosed pursuant to this subparagraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation; provided, records pertaining to any alleged or adjudicated abuse or neglect of the person shall not be inspected or disclosed;

7. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

8. Members of multidisciplinary teams designated by the Department of Human Services, investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of the report;

9. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

10. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or

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other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;

11. Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child; and

12. The parents of the child who is the subject of such records; provided that records pertaining to any alleged or adjudicated abuse or neglect of said child shall not be inspected or disclosed pursuant to this paragraph.

B. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment, protection or supervision of a child alleged to be abused or neglected.

SECTION 10. AMENDATORY 10 O.S. 1991, Section 1139, as last amended by Section 9, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1139), is amended to read as follows:

Section 1139. A. All children adjudicated delinquent and committed to the Department of Human Services shall be discharged at such time as the Department determines there is a reasonable probability that it is no longer necessary, either for the rehabilitation and treatment of the child, or for the protection of the public, that the Department retain legal custody. Following a hearing, the court may also order that a child adjudged delinquent and committed to the Department shall be discharged by the Department provided the child is on parole status and the court deems the discharge in the best interest of the child and public. The Department shall give a fifteen-day notice to the court and the district attorney before discharging from legal custody any child committed and confined in a secure facility.

B. All children adjudged delinquent and committed to the Department and not discharged under subsection A of this section

shall be discharged when the child becomes ~~eighteen (18)~~ sixteen (16) years of age, unless the Department is authorized by the court to retain custody of the child until ~~nineteen (19)~~ seventeen (17) years of age. Upon the court's own motion or motion of the Department the court, after notice to the delinquent child and to the parents and attorney of said child, may authorize the Department to retain custody of the child until he reaches ~~nineteen (19)~~ seventeen (17) years of age. If the court sustains the motion of the Department, the delinquent child during the extended period shall be considered as a child for purposes of receiving services from the Department. If a criminal offense is committed by the individual during the extended period, said offense shall be considered as having been committed by an adult. Except to the extent necessary to effectuate the purposes of this section, an individual after age ~~eighteen (18)~~ sixteen (16) years is considered an adult for purposes of other applicable law.

C. The Department shall not place a child under ten (10) years of age in an institution maintained for delinquent children.

D. The court may retain jurisdiction over a child adjudged delinquent beyond the age of ~~seventeen (17)~~ fifteen (15) years to the extent necessary for the child to complete payment of restitution or court costs.

SECTION 11. AMENDATORY 10 O.S. 1991, Section 1160.2, as amended by Section 12, Chapter 299, O.S.L. 1992 (10 O.S. Supp. 1993, Section 1160.2), is amended to read as follows:

Section 1160.2 As used in this title:

1. "Agencies and programs comprising the juvenile justice system" means:

- a. the courts, the District Attorney's Council and offices of the district attorneys, state and local law enforcement agencies, juvenile bureaus established pursuant to Section 1201 of Title 10 of the Oklahoma Statutes, the Department of Human Services, the Office of Juvenile Justice of the Department of Human Services, the Oklahoma Commission on Children and Youth, the Department of

Corrections, the Criminal Justice Resource Center, any other state agency responsible for the care, custody or supervision of youth alleged or adjudicated to be delinquent, and

- b. to the extent that they are responsible for the provision of services to youth alleged or adjudicated to be delinquent, including but not limited to educational, treatment or residential services, local school districts and area vocational-technical schools and other public and private agencies not otherwise specifically included in subparagraph a of this paragraph, comprising the "children and youth service system" as defined by Section 600 of Title 10 of the Oklahoma Statutes;

2. "Felony act" or "felony offense" means any criminal offense that would constitute a felony crime if committed by an adult;

3. "Habitual criminal acts" means three separate delinquency adjudications for the commission of felony acts. The felony acts relied upon shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

4. "Juvenile court personnel" means those persons responsible for juvenile court intake, probation and parole supervision and services to youth alleged or adjudicated to be delinquent;

5. "Juvenile Justice Information System" means the automated information system established by Section 1160.6 of this title;

6. "Juvenile offender" means a delinquent child as defined by Section 1101 of Title 10 of the Oklahoma Statutes;

7. "Sanction" means a consequence imposed upon a juvenile offender:

- a. as a result of a criminal act, and
- b. as a result of a violation of a condition of probation or parole;

8. "Serious act" means any crime specified by subsection A of Section 1104.2 of Title 10 of the Oklahoma Statutes;

9. "Serious and Habitual Juvenile Offender Program" means the program of information, information sharing, case tracking, case management, supervision and sanctions established by Section 1160.3 of this title;

10. "Serious and Habitual Juvenile Offender Program Implementation Task Force" means the Task Force created by Section 1160.5 of this title for the purpose of implementing the Serious and Habitual Juvenile Offender Program; and

11. "Serious juvenile offender" and "habitual juvenile offender" means persons under ~~eighteen (18)~~ sixteen (16) years of age who have been adjudicated delinquent for the commission of serious acts or habitual criminal acts and are subject to the Serious and Habitual Juvenile Offender Program in accordance with the criteria established pursuant to Section 1160.3 of this title.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991a-13 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Youthful Offender Sentencing Program". The purpose of the program shall be to provide alternative sentencing options for nonviolent youthful offenders.

B. As used in the Youthful Offender Sentencing Program, "youthful offender" means any adult sixteen (16) or seventeen (17) years of age, or a child who has been certified to stand trial as an adult, who has committed a felony offense, who has not previously been convicted of two or more felonies, and who has not been convicted of any offense set forth in subsection A of Section 1104.2 of Title 10 of the Oklahoma Statutes.

C. Upon a verdict or a plea of guilty or nolo contendere of a youthful offender, the court may consider remanding the offender to the custody of the Office of Juvenile Justice. Where the offender is remanded to the custody of the Office of Juvenile Justice, a dispositional order shall be entered pursuant to Section 1116 et seq. of Title 10 of the Oklahoma Statutes.

SECTION 13. AMENDATORY 51 O.S. 1991, Section 24A.8, is amended to read as follows:

Section 24A.8 A. ~~Law~~ Unless prohibited pursuant to expungement provisions specified in Sections 620.6 and 1104.2 of Title 10 of the Oklahoma Statutes, law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. Conviction information, including the name of any person convicted of a criminal offense;

4. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;

6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;

7. Radio logs, including a chronological listing of the calls dispatched; and

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing him, whether committed for a criminal offense, a description of his person, and the date or manner of his discharge or escape.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept

for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall not be made available for public inspection.

SECTION 14. This act shall become effective January 1, 1995.

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