

ENROLLED SENATE
BILL NO. 177

By: Fisher and Brown of the
Senate

and

Tyler of the House

An Act relating to children; amending 10 O.S. 1991, Sections 1107, as amended by Section 20, Chapter 298, O.S.L. 1992, 1108 and 1143 (10 O.S. Supp. 1992, Section 1107), which relate to children taken into custody prior to filing of petition, juvenile detention facilities and commitment of children to institution; requiring certain notice be given to parent; modifying reference; requiring certain contractors to obtain certain insurance; allowing certain method of transportation of certain persons; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107, as amended by Section 20, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, 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 by the peace officer or the court. At the hearing provided for in this subsection, the court shall advise the parent or legal guardian of the child in writing of:

1. The procedures which will be followed with regard to determining custody of the child;
2. The right of the parent or guardian to testify and present evidence at court hearings;
3. The right to be represented by an attorney at court hearings;
4. The consequences of failure to attend any hearings which may be held; and
5. The right and procedure for appealing the findings of a court on custody issues.

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. A child who has been taken into custody as otherwise provided by this title who appears to be a child in need of mental health treatment may be admitted to a mental health facility on an emergency psychiatric basis or for an inpatient mental health evaluation or inpatient mental health treatment only in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1108, is amended to read as follows:

Section 1108. A. Provision shall be made for the temporary detention of children in a juvenile detention facility or the court may arrange for the care and custody of such children temporarily in private homes, subject to the supervision of the court, or the court may provide shelter or may enter into a contract with any institution or agency to receive, for temporary care and custody, children within the jurisdiction of the court. The Department of Human Services shall not be ordered to provide detention unless said Department has designated and is operating detention services or facilities.

County sheriffs, their designee, private contractors under contract with the Department of Human Services for transportation services, or juvenile court officers shall provide for the transportation of juveniles to and from secure detention for purposes of admission, discharge, medical attention or court appearance. No private contract for transportation services shall be entered into by the Department unless the private contractor demonstrates to the satisfaction of the Department that such contractor is able to obtain insurance or provide self-insurance to indemnify the Department against possible lawsuits and meets the requirements of subparagraphs a, b and d of paragraph 4 of subsection B of this section. The Department of Human Services shall not be ordered to provide transportation for a juvenile who is detained in or is destined for secure detention. The Department of Human Services shall provide reimbursement to the entity transporting juveniles for necessary and actual expenses for transporting juveniles who are detained in or destined for a regional detention center as follows:

1. A fee for the cost of personal services at the rate of Eight Dollars (\$8.00) per hour;

2. Mileage reimbursement for each mile actually traveled at the rate established in the State Travel Reimbursement Act;

3. Meals for transporting personnel, not to exceed Five Dollars (\$5.00) per meal; and

4. Meals for juveniles being transported, not to exceed Five Dollars (\$5.00) per meal.

The Department of Human Services shall process and mail reimbursement claims within sixty (60) days of receipt.

B. 1. After July 1, 1983, "juvenile detention facility" shall mean a secure facility, entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. All juvenile detention facilities shall be required to meet standards for certification by the Oklahoma Commission for Human Services. "Alternatives to secure detention" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Commission for Human Services pursuant to subsection C of this section and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility.

2. The board of county commissioners of every county shall provide for the temporary detention of a child who is or who may be subject to secure detention and may construct a building or rent space for such purpose. The boards of county commissioners shall provide for temporary detention services and facilities in accordance with the provisions of the State Plan for the Establishment of Juvenile Detention Services adopted pursuant to subsection C of this section. The boards of county commissioners are hereby authorized to create multi-county trust authorities for the purpose of operating juvenile detention facilities.

3. In order to operate the juvenile detention facilities designated in the State Plan for the Establishment of Juvenile Detention Services, the boards of county commissioners in the designated host counties shall:

- a. operate the juvenile detention facility through a statutorily constituted juvenile bureau subject to the supervision of the district court; or
- b. operate the juvenile detention facility by employing a manager who may employ personnel and incur other expenses as may be necessary for its operation and maintenance; or
- c. contract with a public agency, private agency or single or multi-county trust authority for the operation of the juvenile detention facility. In the event any board of county commissioners contracts with a public or private agency pursuant to the provisions of this section, the Department is authorized to directly contract with and pay such public or private agency for provision of detention services.

4. Management contracts for privately operated detention facilities shall be negotiated with the firm found most qualified by the board of county commissioners. However, no private management contract shall be entered into by the board unless the private contractor demonstrates to the satisfaction of the board:

- a. that the contractor has the qualifications, experience, and personnel necessary to implement the terms of the contract;
- b. that the financial condition of the contractor is such that the term of the contract can be fulfilled;
- c. that the ability of the contractor to obtain insurance or provide self-insurance to indemnify the county

against possible lawsuits and to compensate the county for any property damage or expenses incurred due to the private operation of the juvenile detention facility; and

- d. that the contractor has the ability to comply with applicable court orders and rules ~~and regulations~~ of the Department of Human Services.

5. All counties to be served by a regional juvenile detention facility may, upon the opening of such facility, contract with the operators for the use of the facility for the temporary detention of children who are subject to secure detention; provided, however, a jail, adult lockup, or other adult detention facility may be used for the secure detention of a child as provided for in Section 1107.1 of this title.

6. Expenses incurred in carrying out the provisions of this section shall be paid from the general fund of the county or from other public funds lawfully appropriated for such purposes or from private funds that are available for such purposes. A county may also issue bonds for the construction of detention facilities.

7. The operation of a juvenile detention facility by a county shall constitute a quasi-judicial function and is also hereby declared to be a function of the State of Oklahoma for purposes of the Eleventh Amendment to the United States Constitution. In addition, no contract authorized by the provisions of this section for the providing of transportation services or for the operation of a juvenile detention facility shall be awarded until the contractor demonstrates to the satisfaction of the county that the contractor has obtained liability insurance with the limits specified by the Tort Claims Act against lawsuits arising from the operation of the juvenile detention facility by the contractor with the limits specified by the Tort Claims Act, or if the contract is for the providing of transportation services, the contractor has obtained liability insurance with the limits specified by the Tort Claims Act against lawsuits arising from the transportation of juveniles as authorized by subsection A of this section.

C. The Oklahoma Commission for Human Services, from monies appropriated for that purpose, shall develop, adopt, and implement a plan for secure juvenile detention services and alternatives to secure detention, to be known as the State Plan for the Establishment of Juvenile Detention Services, which shall provide for the establishment of juvenile detention facilities and services with due regard for appropriate geographical distribution and existing juvenile detention programs operated by statutorily constituted juvenile bureaus. Said plan may be amended or modified by the Commission as necessary and appropriate.

1. The Oklahoma Commission for Human Services shall establish procedures for the letting of contracts or grants, including grants to existing juvenile detention programs operated by statutorily constituted juvenile bureaus, and the conditions and requirements for the receipt of said grants or contracts for juvenile detention services and facilities as provided in this section and Section 200.6 of Title 56 of the Oklahoma Statutes. A copy of such procedures shall be made available to any member of the general public upon request. All such grants or contracts shall require the participation of local resources in the funding of juvenile detention facilities. A contract for services shall be based upon a formula approved by the Commission which shall set the contract amount in accordance with the services offered and the degree of compliance with standards for certification.

2. The Oklahoma Commission for Human Services shall establish standards for the certification of detention services and juvenile detention facilities. Such standards may include, but not be limited to: Screening for detention; education and recreation opportunities for juveniles in secure detention; and accreditation by the American Correctional Association. As a condition of continuing eligibility for grants or contracts, secure juvenile detention services and facilities shall be certified by the Commission within two (2) years of the date of the initial grant or contract.

D. The State Department of Health, with the assistance of the Department of Human Services, shall establish standards for the certification of jails, adult lockups, and adult detention facilities used to detain juveniles. Such standards shall include but not be limited to: Separation of juveniles from adults; supervision of juveniles; and health and safety measures for juveniles. The Department of Health is authorized to inspect any jail, adult lockup, or adult detention facility for the purpose of determining compliance with such standards. After July 1, 1985, no jail, adult lockup, or other adult detention facility shall be used to detain juveniles unless such jail, adult lockup, or other adult detention facility complies with the standards established by the Department of Health and is designated as a place for the detention of juveniles by the judge having juvenile docket responsibility in the county from a list of eligible facilities supplied by the Department of Health.

1. The State Department of Health shall forward copies of proposed standards developed pursuant to the provisions of this paragraph to county commissioners, district attorneys, members of the Oklahoma Judiciary and members of the Oklahoma Legislature for their review and comment.

2. After consideration of all comments received and not later than January 1, 1985, the State Board of Health shall approve standards pursuant to the provisions of this paragraph. In all other respects, the development and approval of the standards provided for in this paragraph shall comply with the provisions of the Administrative Procedures Act.

E. The State Board of Health shall adopt rules providing for the routine recording and reporting of the use of any adult jail, lockup or other adult facility for the detention of any person under the age of eighteen (18).

1. For the purpose of ensuring the uniformity and compatibility of information related to the detention of persons under age eighteen (18), said rules shall be reviewed and approved by the Oklahoma Commission on Children and Youth prior to their adoption by the Board; and

2. Said records of detention shall be reviewed during each routine inspection of adult jails, lockups or other adult detention facilities inspected by the State Department of Health and a statistical report of said detentions shall be submitted to the Oklahoma Commission on Children and Youth at least every six (6) months in a form approved by the Commission.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1143, is amended to read as follows:

Section 1143. When a child is committed to the custody of the Department under the provisions of this act, the court shall order the child to be delivered by the sheriff or by a private contractor pursuant to the provisions of Section 1108 of this title to an institution, or other place, designated by the Department, and the cost of transportation shall be paid from the county's general fund.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 1993.

President of the Senate

Passed the House of Representatives the 27th day of May, 1993.

Speaker of the House of Representatives