

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1536

By: Stites

AS INTRODUCED

An Act relating to children; providing that certain persons who have absconded from other states shall be considered adults in certain circumstances; amending 10 O.S. 1991, Section 1107.1, as amended by Section 21, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1107.1), which relates to conditions of detention or confinement; providing for detention of certain persons; 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 1104.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

Whenever a person sixteen (16) or seventeen (17) years of age, who has absconded from another state, is taken into custody, that person shall be considered an adult only for the purposes of detention if:

1. The person has been charged with commission of an offense in the other state which is considered a felony in that state;

2. The person is certified as an adult in that state for the purpose of criminal prosecution for said felony or has reached the statutory age of majority in that state; and

3. The other state is seeking the return of the individual to its jurisdiction provided written or electronically transmitted confirmation is received from the state seeking the return of the person.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1107.1, as amended by Section 21, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, 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. a. 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.
- b. Whenever the court orders a child to be held in a juvenile detention facility, as that term is defined by Section 1108 of this title, an order for secure detention shall remain in force and effect for not more than ten (10) days after such order. Upon an application of the district attorney and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed ten (10) days after such hearing. The total period of pre-adjudicatory or predisposition shall not

exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

2. No child alleged or adjudicated to be deprived or in need of supervision or who is or appears to be a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act 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, a child in need of supervision, or who appears to be a child in need of mental health treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care or, with regard to a child who appears to be a child in need of mental health treatment, a mental health facility in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, 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 serious act as defined by Section ~~2~~ 1160.2 of this ~~act~~ title; or

5. The child is detained for the commission of a crime that would constitute a habitual criminal act as defined by Section ~~2~~ 1160.2 of this ~~act~~ title; or

6. The child is currently charged with a felony act as defined by Section ~~2~~ 1160.2 of this ~~act~~ title or 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. On and after July 1, 1992, a child shall be detained in secure detention only in accordance with the guidelines adopted pursuant to Section ~~3~~ 1160.3 of this ~~act~~ title.

D. 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.

4. Nothing in this section shall preclude detaining in a county jail or other adult detention facility a person provided for in Section 1 of this act if written or electronically transmitted confirmation is received from the state seeking return of the individual that the person is a person provided for in Section 1 of this act and if, during the time of detention, the person is detained in a facility meeting the requirements of subparagraph f of paragraph 1 of this subsection.

E. 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.

F. 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~~ Sections 1101 through 1505A of this title. The Indian tribe may contract with any juvenile detention facility for the providing of detention services.

G. 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 3. This act shall become effective September 1, 1993.

44-1-5442

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