

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2650

By: Cozort

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 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, 1103, as amended by Section 17, Chapter 298, O.S.L. 1992, 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993, 1107, as last amended by Section 5, Chapter 342, O.S.L. 1993, 1107.1, as last amended by Section 6, Chapter 342, O.S.L. 1993, 1109, as amended by Section 22, Chapter 298, O.S.L. 1992, 1112, as amended by Section 7, Chapter 342, O.S.L. 1993, 1116, as last amended by Section 2, Chapter 74, O.S.L. 1993, 1138, as last amended by Section 8, Chapter 342, O.S.L. 1993 and 1139, as last amended by Section 9, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Sections 1101, 1102, 1103, 1104.2, 1107, 1107.1, 1109, 1112, 1116, 1138 and 1139), which relate to juveniles; modifying definitions; authorizing certain motions by the district attorney; requiring certain agreement by the district attorney; changing age for reverse certification; modifying reverse certification crimes; modifying authority of employees of the court to take children into custody; modifying

grounds for placement in secure detention;
providing for use of information gained from
custodial interrogations; modifying requirements
for certification of child as adult; requiring
determinate placement for certain children;
modifying criteria for requiring community service
or restitution; providing procedure for
modification or revocation of dispositional plans;
providing authority of the court; requiring court
approval of certain placements; modifying certain
placement option; authorizing motion by the
district attorney for retention of custody of
certain children; modifying age at which individual
is considered an adult for certain purposes;
amending 21 O.S. 1991, Section 443, as amended by
Section 12, Chapter 276, O.S.L. 1993 (21 O.S. Supp.
1993, Section 443), which relates to escapes from
county or city jails; expanding application of law
to include escapes from juvenile detention
facilities or shelters; amending 21 O.S. 1991,
Section 1283, as amended by Section 3, Chapter 151,
O.S.L. 1992 (21 O.S. Supp. 1993, Section 1283),
which relates to possession or control of weapons;
prohibiting certain juveniles from having such
weapons; creating the Youthful Offender Sentencing
Program; stating purpose; defining terms; providing
sentencing and placement options of the court;
providing for indeterminate placement; requiring
certain review and reports; providing for plans of
rehabilitation; providing court authority at
conclusion of review hearings; requiring sentence
to be within range of authorized punishment;

crediting certain time to sentence; providing for subsequent criminal prosecutions; providing authority of the Department of Human Services; limiting authority of other juvenile agencies; providing responsibility of juvenile agencies; providing rights of youthful offender; requiring district attorney to transmit certain reports; providing procedure for pardons; providing procedure for setting aside conviction; providing for expungement of records; providing for modification of sentence of youthful offenders committed to custody of the Department of Corrections; 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 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, except for any person thirteen (13) years of age or older charged with murder in the first degree or any person fifteen (15) or 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 any person who has been certified as an adult pursuant to Section 1112 of this title, any person seventeen (17) years of age alleged to have 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 any person seventeen (17) years of age who has habitually violated traffic laws or traffic ordinances; 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 or against whom the imposition of judgment and sentence has been deferred 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 seventeen (17) 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 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 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 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 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 drug and alcohol treatment.

SECTION 2. 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 or motion by the district attorney, 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) 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) 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, 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 3. AMENDATORY 10 O.S. 1991, Section 1103, as amended by Section 17, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1993, 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, if the district attorney agrees in writing to the determination that no further action need be taken and that such informal adjustment is warranted 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)".

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 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 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 pursuant to the Inpatient Mental Health Treatment of Children Act.

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

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 thirteen (13) years of age or older who is charged with murder in the first degree or any person fifteen (15) or sixteen (16) or ~~seventeen (17)~~ years of age who is charged with committing, conspiring to commit, or attempting to commit the following offenses: assault and battery with a deadly weapon, aggravated assault and battery on a peace officer, poisoning with intent to kill, assault or assault and battery with intent to kill, assault or assault and battery with intent to commit a felony, murder in the second degree, kidnapping, robbery with a firearm or other dangerous weapon, rape in the first degree, rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, child beating, use or possession of firearm or other offensive weapon while committing a felony or attempting to commit a felony, use or possession of firearm or other offensive weapon with intent to commit 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,~~ wiring any equipment, vehicle, or structure with explosives, shooting with intent to kill, pointing a firearm or deadly weapon at any person or persons in violation of Section 1289.16 of Title 21 of the Oklahoma Statutes, 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, rioting, manslaughter in the first degree, manslaughter in the second degree, negligent homicide, nonconsensual sodomy, ~~or~~ manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, or trafficking in illegal drugs, shall be considered as an adult. Any person classified as a habitual juvenile offender as defined in Section 1160.2 of this title also shall be considered an adult.

B. Upon the arrest and detention, such ~~sixteen- or seventeen-~~
~~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) years of age or over.

B. C. 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.~~ D. 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.~~ E. 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 be expunged and any mention of the accused person shall be removed from public record.

~~E.~~ F. 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 1107, as last amended by Section 5, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, 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~~ for any criminal offense as otherwise provided by law, 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; ~~and~~

2. By an employee of the court without a court order, 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; and

3. 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 or there is probable cause to believe the child has committed a crime or is in violation of the terms of his probation, parole or order of the court.

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. 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 6. AMENDATORY 10 O.S. 1991, Section 1107.1, as last amended by Section 6, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, 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 1505 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, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes, 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 any delinquent placement;

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;

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

4. The child is detained for the commission of a crime that would constitute a serious act as defined by Section 1160.2 of this title;

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

6. The child is currently charged with a ~~felony act as defined by Section 1160.2 of this 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; or

7. The child is currently charged with a felony act.

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 1160.3 of this 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 a seventeen-year-old or an eighteen-year-old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

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, Section 40 et seq. of this title, providing that the use of the juvenile detention facility meets the

requirements of Section 1101 et seq. 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 7. AMENDATORY 10 O.S. 1991, Section 1109, as amended by Section 22, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1993, Section 1109), is amended to read as follows:

Section 1109. A. No information gained by ~~questioning a~~ custodial interrogation of a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the ~~questioning~~ custodial interrogation 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~~ custodial interrogation 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, a delinquent child or a child in need of supervision, 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 and whenever a court-appointed special advocate is available to the court to serve as a guardian ad litem regardless of whether or not a guardian ad litem has been requested by the child or his attorney. The availability of a court-appointed special advocate shall be determined by the executive director of the court appointed special advocate program for the county.

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. Whenever a court-appointed special advocate is available for appointment as a guardian ad litem as provided by this subsection, the court shall give priority to the appointment of a court-

appointed special advocate as the guardian ad litem of a deprived child.

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 8. 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~~ 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) 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) 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 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 9. AMENDATORY 10 O.S. 1991, Section 1116, as last amended by Section 2, Chapter 74, O.S.L. 1993 (10 O.S. Supp. 1993, 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. In the case of a child adjudicated delinquent such placement shall be for determinate period of time consistent with the range of punishment of the adjudicated charge, not to extend beyond such child's nineteenth birthday as otherwise provided by law. 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 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 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. In the case of a child adjudicated delinquent, such commitment shall be for a determinate

period of time consistent with the range of punishment of the adjudicated charge, not to extend beyond such child's nineteenth birthday as otherwise provided by law.

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~~ a determinate period of time consistent with the range of punishment of the adjudicated charge, not to extend beyond such child's nineteenth birthday as otherwise provided by law.

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.

6. With respect to a child adjudicated a delinquent child, the court may:

- a. for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, order the child 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. Except as otherwise provided by law, such adjudication order shall be kept confidential by the Board,

- b. order the 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,
- c. ~~if it is consistent with the welfare of the child,~~ 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,
- d. order the child to pay the fine which would have been imposed had such child been convicted of such crime as an adult. Any such fine collected pursuant to this paragraph shall be deposited in a special Work Restitution Fund to be established by the court to allow children otherwise unable to pay restitution to work in community service projects in the private or public sector to earn money to compensate their victims,
- e. order the cancellation or denial of driving privileges as provided by Sections 6-107.1 and 6-107.2 of Title 47 of the Oklahoma Statutes,
- f. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, make the following orders: sanction detention in the residence of the child or facility designated by the Department of Human Services or the juvenile bureau for such purpose for up to five (5) days; weekend

detention in a place other than a juvenile detention facility or shelter; tracking; or house arrest with electronic monitoring. On and after the adoption of guidelines by the Oklahoma Supreme Court for the Implementation of the Serious and Habitual Juvenile Offender Program, the provisions of subparagraphs a through e of this paragraph shall be subject to said guidelines,

- g. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, impose sanctions for the violation of pre-adjudicatory or postadjudicatory violations of probation.

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

8. In any dispositional order removing a child from the home of the child, the court shall make a determination that, in accordance with the best interests of the child, 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. 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.

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

D. 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.

E. 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.

F. When a juvenile has been placed on any dispositional plan, that disposition of said juvenile shall not be modified or revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such modification or revocation is filed by the district attorney with the clerk of the dispositioning court and competent evidence justifying the modification or revocation of said dispositional plan is presented to the court at a hearing to be held for that purpose within twenty (20) days after the date of arrest.

G. If one of the grounds for modification or revocation is the failure of the defendant to make restitution as ordered, the Department of Human Services or the Juvenile Bureau shall forward to the district attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the court, and said district attorney shall file a petition setting forth the grounds for modification or revocation.

H. The juvenile ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if he undergoes a change of condition which materially affects his ability to comply with the court's order.

I. At the hearing, if one of the grounds for the petition for modification or revocation is the juvenile's failure to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the juvenile or his immediate family, the court may cancel all or any part of the amount still due, or modify the terms or method of payment.

J. The court may revoke the disposition and may redispotion and, if the child is committed to the Department of Human Services, may make specific orders concerning the placement of said juvenile. The person whose disposition is being considered for revocation at said hearing shall have the right to be represented by counsel, to present evidence in his own behalf and to be confronted by witnesses against him. Any revocation or redispotion of the court in whole or in part shall be subject to review on appeal, as in other appeals of criminal cases. Bail may be allowed pending appeal.

SECTION 10. AMENDATORY 10 O.S. 1991, Section 1138, as last amended by Section 8, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, 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:

1. The prevention of delinquency;
2. The care and rehabilitation of delinquent children; and
3. The protection of the public.

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 shall provide for placement, with court approval, pursuant to any option authorized by paragraphs 1 through 7 of this subsection; provided, nothing in this subsection shall be construed to establish a priority in regard to the selection of an option or to mandate the exclusive use of one particular option:

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,
- b. committed a serious felony constituting violent, aggressive and assaultive behavior,
- c. habitually committed ~~serious~~ delinquent acts, which would constitute felonies if committed by an adult,
- d. committed multiple serious delinquent acts, or
- e. violated any condition of probation or parole,

to the extent that it is necessary for the protection of the public. For purposes of placement, all deferred prosecutions for serious, habitual, violent, aggressive or assaultive crimes shall count toward placement decisions;

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;

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

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;

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

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 as provided by Section 1135.1 of this title if the delinquent child has been found by a court to be in need of mental health treatment.

C. The Department shall place priority on the placement of delinquent youth held in secure juvenile detention facilities.

SECTION 11. 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~~ court 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)~~ seventeen (17) years of age, unless the Department is authorized by the court to retain custody of the child until nineteen (19) years of age. Upon the court's own motion, motion of the district attorney, 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) 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)~~ seventeen (17) 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) years to the extent necessary for the child to complete payment of restitution or court costs.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 443, as amended by Section 12, Chapter 276, O.S.L. 1993 (21 O.S. Supp. 1993, Section 443), is amended to read as follows:

Section 443. A. Any person having been imprisoned in a county or city jail or detained in a juvenile detention facility or shelter awaiting charges on a felony offense or prisoner awaiting trial or having been sentenced on a felony charge to the custody of the Department of Corrections who escapes from a county or city jail or juvenile detention facility or shelter, either while actually confined therein, while permitted to be at large as a trusty, or while awaiting transportation to a Department of Corrections facility for execution of sentence, is punishable by imprisonment of not less than one (1) year nor more than seven (7) years.

B. Any person who is an inmate in the custody of the Department of Corrections who escapes from said custody, either while actually confined in a correctional facility, while assigned to the house arrest program authorized by Section 510.2 of Title 57 of the Oklahoma Statutes or other alternative to incarceration authorized by law, while assigned to the Preparole Conditional Supervision Program as authorized by Section 365 of this title or while permitted to be at large as a trusty, shall be punishable by imprisonment of not less than two (2) years nor more than seven (7) years.

C. For the purposes of this section, an inmate assigned to the house arrest program, other alternative to incarceration authorized by law, or to the Preparole Conditional Supervision Program shall be considered to have escaped if the inmate cannot be located within a twenty-four hour period or if he fails to report to a correctional facility or institution, as directed.

D. For the purposes of this section, if the individual who escapes has felony convictions for offenses other than the offense for which he was serving imprisonment at the time of his escape, those previous felony convictions may be used for enhancement of punishment pursuant to the provisions of Section 51 of Title 21 of the Oklahoma Statutes. The fact that any such convictions may have been used to enhance punishment in the sentence for the offense for which he was imprisoned at the time of the escape shall not prevent such convictions from being used to enhance punishment for the escape.

SECTION 13. AMENDATORY 21 O.S. 1991, Section 1283, as amended by Section 3, Chapter 151, O.S.L. 1992 (21 O.S. Supp. 1993, Section 1283), is amended to read as follows:

Section 1283. A. It shall be unlawful for any person having previously been convicted of any felony in any court of a state or of the United States or any juvenile adjudicated as a delinquent for committing an act which would constitute a felony if committed by an adult to have in his possession or under his immediate control, or in any vehicle which he is operating, or in which he is riding as a passenger, any pistol, imitation or homemade pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm which could be easily concealed on the person, in personal effects or in an automobile; provided any person elected or appointed as a peace officer who has previously been convicted of any felony in any court of a state or of the United States, and who has received a full and complete pardon from the proper authority and has been

subsequently certified by the Oklahoma Council on Law Enforcement Education and Training, pursuant to Section 3311 of Title 70 of the Oklahoma Statutes, and is actively employed as a full-time peace officer on the effective date of this act, shall be permitted to possess a weapon specified in this section for the sole purpose of performing duties of a peace officer. For the purposes of this section, "sawed-off shotgun or rifle" shall mean any shotgun or rifle which has been shortened to any length.

B. Any person who has previously been convicted of a nonviolent felony in any court in the State of Oklahoma, and who has received a full and complete pardon from the proper authority shall be permitted to possess a weapon specified in this section to the extent necessary for the pursuit of gunsmithing or firearm repair, provided such person has graduated from a gunsmithing school conducted by an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and who is engaged in the occupation of gunsmithing or firearm repair.

SECTION 14. 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 youthful offenders.

B. As used in the Youthful Offender Sentencing Program:

1. "Offender" means any person under seventeen (17) years of age who was charged under Section 1104.2 of Title 10 of the Oklahoma Statutes or a juvenile who has been certified to stand trial as an adult, under Section 1112 of Title 10 of the Oklahoma Statutes, and who has committed any felony offense; and

2. "Juvenile agency" means the Department of Human Services, a juvenile bureau or any public or private institution or agency

licensed by this state to provide care, custody or rehabilitative treatment for juvenile delinquents.

C. Upon a verdict of guilt or a plea of guilty or nolo contendere of a youthful offender as an adult the court may:

1. Defer judgment pursuant to the provisions of Section 991c of Title 22 of the Oklahoma Statutes;

2. Sentence said offender to any sentence provided by law in the custody of the Department of Corrections;

3. Suspend the execution of the sentence pursuant to Section 991a of Title 22 of the Oklahoma Statutes;

4. Delay sentencing pursuant to the provisions of Section 996 et seq. of Title 22 of the Oklahoma Statutes; or

5. With the consent of the offender and his parent, guardian or custodian defer further proceedings and order the offender placed in the custody of, or under the supervision of, a juvenile agency if the youthful offender is less than seventeen (17) years of age.

D. Placement of a youthful offender in the custody or under the supervision of a juvenile agency as provided in this section shall be for an indeterminate period of time not to exceed five (5) years or the youthful offender's nineteenth birthday, whichever comes first. The court may impose all orders available pursuant to Section 1116 of Title 10 of the Oklahoma Statutes.

E. If a youthful offender is placed in the custody or under the supervision of a juvenile agency as provided in subsection D of this section, the court shall:

1. Conduct a semiannual review based upon written reports of the youth's conduct, progress and condition;

2. Conduct a review hearing within the thirty (30) days immediately preceding the date the youthful offender becomes seventeen (17) years of age; and, if still under the supervision of a juvenile agency, within the thirty (30) days immediately preceding the date the youthful offender becomes eighteen (18) years of age;

and, if still under the supervision of a juvenile agency, within the thirty (30) days immediately preceding the date the youthful offender becomes nineteen (19) years of age; and

3. Conduct a review hearing upon the motion of the district attorney or a juvenile agency with custody of a youthful offender.

F. Written reports concerning the conduct, progress and condition of a youthful offender shall be submitted to the court prior to scheduled reviews by the juvenile agency having custody or supervision of the youth. Such reports shall include a written plan of rehabilitative treatment for the youthful offender, including clearly stated treatment objectives. Such reports shall comply with and be in lieu of the presentence report provided for in Section 982 of Title 22 of the Oklahoma Statutes.

The plan of rehabilitation shall include information, evaluations and data directed by the sentencing court, and may include but not be limited to the investigation report of probation officers, an assessment of security risks and offender needs and a recommended specific course of action including, where applicable, psychological counseling, psychiatric treatment, medical treatment, education or vocational training, work, restitution, and such other programs, which will offer the best opportunity for rehabilitation of said offender. If the plan recommends confinement, the plan shall state specifically the type of confinement that the Department of Corrections proposes to utilize and the amount of time the offender will spend in that confinement.

Copies of reports shall be provided by the agency to the youthful offender, his counsel, parent or guardian, and the district attorney. The court shall consider any timely written response to the agency report before concluding its review. A review hearing shall be conducted in open court after notice to the youth, his counsel, parent or guardian, the juvenile agency, and the appropriate district attorney. The court may schedule semiannual

review for hearing in open court, after notice, at its discretion and may schedule such other hearings, after notice, as the court deems necessary.

G. At the conclusion of any review hearing in open court and after consideration of all reports and other evidence properly submitted to the court, the court may:

1. Transfer the youthful offender from the custody or supervision of one juvenile agency to the custody or supervision of another juvenile agency, provided that in no case shall a youthful offender be placed in the custody of a juvenile bureau;

2. Defer judgment for an additional time pursuant to the provisions of Section 991c of Title 22 of the Oklahoma Statutes;

3. Order the youthful offender discharged without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Oklahoma Statutes and dismiss the charge with prejudice to any further action if the court finds that the youthful offender has been rehabilitated and such dismissal will not jeopardize public safety; or

4. Enter a judgment of guilt and proceed as provided in Section 991a of Title 22 of the Oklahoma Statutes or sentence said offender to any sentence provided by law if the court finds that the youthful offender has:

- a. injured or endangered the life or health of another person by his violent behavior,
- b. escaped or attempted to escape from an institution or other facility on more than one occasion,
- c. committed a crime while in the custody or under the supervision of a juvenile agency as shown by a judgment entered or nolo contendere, or by proof sufficient to establish probable cause that the youth

committed a crime while in the custody or under the supervision of a juvenile agency; or has absented himself from his placement or place of residence authorized by the juvenile agency, or

- d. failed substantially to comply with a written plan of rehabilitation or failed substantially to achieve reasonable treatment objectives and is within thirty (30) days of his seventeenth birthday, or if previously continued by the court under the supervision of a juvenile agency, is within thirty (30) days of his eighteenth or nineteenth birthday.

H. If the court does impose a sentence or defers a sentence said sentence must be within the range of punishment as authorized by law and must credit the time the offender was under a juvenile agency supervision. For the purpose of calculating time served to be applied toward any sentence imposed on a youthful offender, in the event a youthful offender has been placed in the custody of the Department of Human Services or other juvenile agency, he shall receive credit for any time in residence at a state institution for delinquents if lawfully released from such institution. Upon commitment to the Department of Corrections, a youthful offender shall also receive other credits as provided by law, if any, as any adult inmate.

I. Any child who has been subject to the Youthful Offender Program and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred or delayed or whose placement has been made with a juvenile agency 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.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1705 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Whenever a youthful offender is committed to the custody of the Department of Human Services, the Department may, with court approval:

1. Place the youthful offender in a state training school or other institution or facility maintained by the state for delinquent children;

2. Place the youthful offender in a group home or community residential center;

3. Place the youthful offender in any licensed private child care facility deemed by the Department to be in the best interest of the youthful offender;

4. Place the youthful offender under supervision after a period in one of the facilities referred to in paragraphs 1, 2 and 3 of this subsection or under immediate supervision. The Department of Human Services shall not confine a youthful offender in a state institution operated by the Department after the youthful offender reaches seventeen (17) years of age, but is hereby authorized to provide supervision to youthful offenders until such time said youthful offender reaches nineteen (19) years of age. The Department is further authorized to retain said youthful offenders in a state institution or community-based facility until the youth becomes nineteen (19) years of age if the youth was placed in the institution or facility before his or her seventeenth birthday.

B. No juvenile agency, other than the Department of Corrections, shall retain custody of a youthful offender beyond the date the youth becomes seventeen (17) years of age, nor shall any juvenile agency provide supervision of a youthful offender beyond the date the youth becomes nineteen (19) years of age. In no case

shall a youthful offender be placed in the custody of a juvenile bureau.

C. Any department, institution or agency receiving custody of a youthful offender shall be responsible for the care and control of the youthful offender, and shall have the duty and the authority to provide food, clothing, shelter, ordinary medical care, education and discipline, and in an emergency to authorize surgery or other extraordinary care. Said medical care, surgery and extraordinary care shall be charged to the appropriate agency where the youthful offender qualifies for said care under law, rule, regulation or administrative order or decision. Nothing in this section shall abrogate the right of a youthful offender to any benefits provided through public funds nor the parents' statutory duty or responsibility to provide said necessities; further, 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.

D. A youthful offender in the custody of a juvenile agency shall be entitled to all the rights afforded juvenile delinquents pertaining to the conditions and restrictions in facilities where delinquents may be placed, including any due process afforded delinquents in regard to movement from a nonsecure to a secure placement.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1706 of Title 10, unless there is created a duplication in numbering, reads as follows:

The district attorney shall transmit to any department or agency having custody of a youthful offender a written narrative report in the form as provided for in subsection C of Section 215.39 of Title 19 of the Oklahoma Statutes, describing the commission of the offense and any factors which might enhance or diminish the gravity

of the offender's conduct, with any such other information as the department or agency may request.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1707 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon the motion of a person who has been convicted and sentenced as a youthful offender, with the recommendation of the sentencing court, the Governor may grant a full and complete pardon and restore citizenship to any person who has been convicted and sentenced as a youthful offender and who has completed the sentence or been discharged from parole.

B. Upon the motion of a person convicted as a youthful offender, and five (5) years after the expiration of the sentence of the youthful offender, the court may set aside the conviction for good cause if:

1. The court has previously found the person rehabilitated;
2. The person was discharged from supervision by the Department of Human Services or a juvenile bureau, or was granted early discharge from such supervision by the court; or
3. The person has completed the sentence imposed as a result of his first conviction as a youthful offender and has no subsequent convictions.

If a conviction is set aside pursuant to this subsection, the person shall thereafter be released from all penalties and disabilities resulting from the offense for which he was convicted, including but not limited to any disqualification for any employment or occupational license, or both, created by any other provision of law. The court may in addition order any law enforcement agency to produce all files and records pertaining to said arrest and conviction of the youthful offender and shall order the clerk of the court to destroy or obliterate the entire file and record of the case, including docket sheets, index entries, court records,

summons, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the youthful offender is mentioned. The court may order probation officers and counselors to destroy all records, reports, and social and clinical studies relating to said youthful offender that are in their possession except when said documents are necessary to maintain state or federal funding.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1708 of Title 10, unless there is created a duplication in numbering, reads as follows:

If a youthful offender is committed to the custody of the Department of Corrections the sentencing court may, pursuant to the procedure prescribed in Section 982a of Title 22 of the Oklahoma Statutes and in lieu of any modification of sentence authorized by that section, modify the youthful offender's sentence by placing him in the custody of a juvenile agency as provided in subsection A of Section 15 of this act if the youth is less than seventeen (17) years of age at the time of such modification.

SECTION 19. This act shall become effective September 1, 1994.

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