

SHORT TITLE: Children; custody; notice; modifying language;
emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 177

By: Fisher

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1107, as amended by Section 20, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1107), which relates to children taken into custody prior to filing of petition; requiring certain notice be given to parent; modifying reference; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107, as amended by Section 20, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1107), is amended to read as follows:

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

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

2. Pursuant to an order of the district court issued on the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The

application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

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

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

1. The rights and obligations of the parents;

2. The procedures which will be followed with regard to determining custody of the child;

3. The right of the parent or guardian to testify and present evidence at court hearings;

4. The advisability of being represented by an attorney at court hearings;

5. The consequences of failure to attend any hearings which may be held; and

6. The right and procedure for appealing the findings of a court on custody issues.

The court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to subsection B of Section 1104.1 of this title is warranted.

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

E. A child who has been taken into custody as otherwise provided by this title who appears to be a child in need of mental

health treatment may be admitted to a mental health facility on an emergency psychiatric basis or for an inpatient mental health evaluation or inpatient mental health treatment only in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-0303

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