

SHORT TITLE: Juveniles; authorizing secure detention for commission of felony act; opening certain juvenile records; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 452

By: Helton

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1107.1, as amended by Section 21, Chapter 298, O.S.L. 1992 and 1125.3 (10 O.S. Supp. 1992, Section 1107.1), which relate to secure detention of juveniles and exception to confidentiality for juvenile records; authorizing secure detention for commission of felony act; clarifying language; modifying statutory references; opening certain juvenile records; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107.1, as amended by Section 21, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1107.1), is amended to read as follows:

Section 1107.1 A. When a child is taken into custody pursuant to the provisions of Sections 1101 through 1506 of this title, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public.

1. a. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The court, for good and sufficient cause shown, may extend the effective

period of such an order for an additional period not to exceed sixty (60) days.

- b. Whenever the court orders a child to be held in a juvenile detention facility, as that term is defined by Section 1108 of this title, an order for secure detention shall remain in force and effect for not more than ten (10) days after such order. Upon an application of the district attorney and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed ten (10) days after such hearing. The total period of pre-adjudicatory or predisposition shall not exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

2. No child alleged or adjudicated to be deprived or in need of supervision or who is or appears to be a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment

of Children Act, 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 a correctional facility or community correctional program or placement; ~~or~~

2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; ~~or~~

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

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

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

6. The child is currently charged with a felony act as defined by Section ~~2~~ 1160.2 of this ~~act~~ title; or

7. The child is currently charged with a misdemeanor and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on pre-adjudicatory community supervision,
- c. is currently on release status on a prior delinquent offense, or
- d. has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings.

C. ~~On and after July 1, 1992~~ In addition to the criteria set forth in subsection B of this section, a child ~~shall~~ may also be detained in secure detention ~~only~~ in accordance with the guidelines adopted pursuant to the Serious and Habitual Juvenile Offender Program, Section ~~3~~ 1160.3 of this ~~act~~ title.

D. 1. Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

- a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, ~~and~~
- b. the child is awaiting an initial court appearance, ~~and~~
- c. the child's initial court appearance is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, ~~and~~
- d. the court of jurisdiction is outside of the Standard Metropolitan Statistical Area as defined by the Bureau of Census, ~~and~~
- e. there is no existing acceptable alternative placement for the child, and

f. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Commission for Human Services, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

- (1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities~~+~~
- (2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities~~+~~ and
- (3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling.

Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile training school or from a Department of Human Services group home from being held in any jail certified by the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or

alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

- a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.
- b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a county jail or other adult detention facility an eighteen-year old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

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 ~~act~~ 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 2. AMENDATORY 10 O.S. 1991, Section 1125.3, is amended to read as follows:

Section 1125.3 A. The confidentiality restrictions otherwise provided by law for juvenile court records shall not apply:

1. Upon the adjudication of a juvenile offender for a ~~serious act or for habitual criminal acts as defined in Section 2 of this felony~~ act. The court having jurisdiction shall note on the juvenile court record of such juvenile offenders that said record is no longer confidential;

2. Upon the certification of a juvenile pursuant to Section 1112 of ~~Title 10 of the Oklahoma Statutes~~ this title; ~~or~~

3. Upon the charging or certification of a juvenile pursuant to Section 1104.2 of ~~Title 10 of the Oklahoma Statutes~~ this title;

4. Upon the adjudication for any misdemeanor crime causing physical injury to the victim; and

5. Upon commission of any traffic offense involving injury to property or physical injury to any person.

B. The confidentiality restrictions provided by law for law enforcement records pertaining to juveniles shall not apply to the arrest records of juveniles defined by Section ~~2~~ 1160.2 of this ~~act~~ title as serious offenders or habitual juvenile offenders or to juveniles charged or certified pursuant to Section 1104.2 of ~~Title 10 of the Oklahoma Statutes~~ this title or certified pursuant to Section 1112 of ~~Title 10 of the Oklahoma Statutes~~ this title.

C. Except as provided by this subsection, the fingerprinting of persons under the age of eighteen (18) years shall be as otherwise provided by law for the fingerprinting of adults.

1. When a child is detained or arrested in the course of an investigation of a criminal offense and:

a. a comparison of the fingerprints of the child with fingerprints found during the investigation of the offense is negative, or

b. a court finds that the child did not commit the alleged offense,

all law enforcement records of the arrest and, if applicable, juvenile court and agency records shall be amended to reflect said facts immediately after the comparison or court finding;

2. Fingerprints obtained pursuant to this subsection shall be retained in a central state depository and in a local depository maintained by a duly constituted law enforcement agency;

3. Fingerprints obtained and maintained pursuant to this subsection may be used only by law enforcement officers for comparison purposes in connection with the investigation of a crime or to establish identity in instances of death, serious illness, runaways, or emergency; and

4. If a child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card pursuant to the provisions of the Oklahoma Minor Identification Act, Section 1629 et seq. of this title, the provisions of the Oklahoma Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian or legal custodian of the child, fingerprints obtained and maintained pursuant to the Oklahoma Minor Identification Act may be used by law enforcement officers as provided by paragraph 3 of this subsection.

D. When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the child.

SECTION 3. 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.

44-1-0183

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