

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 266

By: Leftwich of the Senate
and
Paulk of the House

An Act relating to juveniles; amending 10 O.S. 1991, Sections 1102, as last amended by Section 30, Chapter 290, O.S.L. 1994, 1104.1, as last amended by Section 18, Chapter 298, O.S.L. 1992, and 1107, as last amended by Section 34, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Sections 1102, 1104.1 and 1107), which relate to jurisdiction of court, taking a child into custody and petitions; modifying language; authorizing release of child to responsible adult; providing an effective date; and declaring an emergency.

AUTHOR: Add the following House Coauthor: Voskuhl

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to juveniles; amending 10 O.S. 1991, Sections 1102, as last amended by Section 30, Chapter 290, O.S.L. 1994, 1104.1, as last amended by Section 18, Chapter 298, O.S.L. 1992, and 1107, as last amended by Section 34, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Sections 1102, 1104.1 and 1107), which relate to jurisdiction of court, taking a child into custody and petitions; authorizing release of child to responsible adult; defining term; requiring assumption of responsibility for costs of certain damages; providing penalties; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1102, as last amended by Section 30, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, 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, motion by the district attorney or motion by the

Department, 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. 1. A municipality may enter into an interlocal cooperation agreement with the district court pursuant to the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the

Oklahoma Statutes, 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. For the purposes of this subsection, "district court" shall mean the district court judicial district or districts in which the contracting municipality is situated. The chief juvenile judge of the district court judicial district is hereby authorized to enter into the interlocal cooperation agreement as provided for in this section for and on behalf of said judicial district. Provided, if there is no chief juvenile judge in the judicial district, then the presiding judge of the judicial administrative district that includes the contracting judicial district may enter into the agreement for and on behalf of said judicial district.

2. Notwithstanding any other provision of this title, a child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to one or more of the offenses listed in paragraph 1 of this subsection, and who can be prosecuted in municipal court for such offense pursuant to jurisdiction assumed by the municipal court under paragraph 1 of this subsection, may be temporarily detained by the municipality in a municipal juvenile facility certified by the Oklahoma Commission for Human Services, but only under the following conditions:

- a. the municipality shall immediately take all reasonable steps to attempt to locate the child's parent, legal guardian, legal custodian, responsible adult or attorney and determine if said parent, legal guardian, legal custodian, responsible adult or attorney is

willing to appear at the municipal juvenile facility and assume personal custody of the child upon the child's release from such facility,

- b. the child shall be released to the personal custody of ~~his or her~~ a parent, legal guardian, legal custodian, responsible adult or attorney as soon as practicable and upon the written promise of such parent, legal guardian, legal custodian, responsible adult or attorney to return the child to municipal court to answer the municipal charges on the date and at the time set by the municipal court,
- c. the child shall be detained in the municipal juvenile facility for no longer than twenty-four (24) hours; provided, if no parent, legal guardian, legal custodian, responsible adult or attorney appears at the municipal juvenile facility and assumes personal custody of the child within said twenty-four-hour period, then custody or release of the child shall be determined pursuant to the provisions of Section 1107 of this title,
- d. the child shall not be held in any jail, adult lockup, or adult detention facility unless total separation exists between juveniles and adult spatial areas,
- e. the child shall be provided with adequate fresh drinking water,
- f. the child shall be provided with adequate food not less than three times in a twenty-four-hour period,
- g. the child shall be provided with adequate bathroom facilities and bedding, and
- h. the child shall be provided with any necessary medical care and treatment.

Prior to the temporary detention of any child under authority of this subsection, the municipal juvenile facility shall be certified by the Oklahoma Commission for Human Services under the applicable certification standards set by said Commission, and each member of the staff of the municipal juvenile facility shall have satisfactorily completed a training program provided or approved by the Department of Human Services. In furtherance of this subsection, the Oklahoma Commission for Human Services is directed to and shall establish standards for the certification of municipal juvenile facilities, with said standards to include, but not be limited to, the conditions set forth in subparagraphs a through h, inclusive, of this paragraph, and the Department of Human Services is directed to and shall provide or approve an appropriate training program for staff members of such facilities. In lieu of operating a municipal juvenile facility with trained municipal employees, the municipality may contract with an independent public or private facility properly certified by the Oklahoma Commission for Human Services for performance of the detention services authorized by this paragraph. For the purposes of this section, a "municipal juvenile facility" shall mean a secure facility entirely separate from any jail, adult lockup, or other adult facility, or spatially separate if contained inside any jail, adult lockup, or other adult facility which is certified by the Oklahoma Commission for Human Services for use for the temporary detention of juveniles as authorized by the provisions of this paragraph. The provisions of this paragraph shall not restrict or limit the use of municipal juvenile facilities for detention of juveniles who are detained pursuant to other provisions of law.

3. Pursuant to an interlocal cooperation agreement between a municipality and the district court, as authorized by paragraph 1 of this subsection, a child under eighteen (18) years of age may be charged, prosecuted and, if convicted, fined for violating such a

municipal ordinance relating to one or more of the offenses listed in paragraph 1 of this subsection; 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 ninety (90) 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. The municipal court may also impose costs as authorized by law.

4. All municipal arrest records, prosecution records, court records, and court proceedings for cases involving children under eighteen (18) years of age charged with violating municipal ordinances relating to one or more of the offenses listed in paragraph 1 of this subsection shall be kept confidential and shall not be open to public inspection except by order of the municipal 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 interlocal cooperation agreement between a municipality and the district court pursuant to subsection E of this section shall be earmarked and used by the municipality only for the following purposes:

1. To fund local programs which address problems of juvenile crime;
2. To fund the costs of prosecutions authorized pursuant to subsection E of this section;
3. To fund the costs of detention authorized pursuant to subsection E of this section; and

4. To fund administrative costs related to local programs that address problems of juvenile crime or related to the prosecution, detention, or punishment authorized pursuant to subsection E of this section.

Such earmarked funds shall not be used by the municipality for any purpose other than the purposes set forth in paragraphs 1 through 4 of this subsection.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1104.1, as last amended by Section 18, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1994, Section 1104.1), is amended to read as follows:

Section 1104.1 A. Where a child has been taken into custody under any provision of the Juvenile Code, Section 1101 et seq. of this title, before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to ~~his~~ a parent, guardian or other legal custodian or responsible adult, unless otherwise provided for herein.

B. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, guardian or other person having custodial care of the child, the five-day limitation herein shall not cause the child to be relinquished to such parent, guardian or other legal custodian. In all such cases, the court shall determine whether the petition was filed within a reasonable time, except that a petition shall be filed within thirty (30) days of the child being taken into custody.

C. No order of the court providing for the removal of a child alleged or adjudicated deprived, delinquent or in need of supervision from his home shall be entered unless the court finds that the continuation of the child in ~~his~~ the home is contrary to the welfare of the child. Said order shall include either:

1. A determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his

home and, as appropriate, reasonable efforts have been made to provide for the return of the child to ~~his~~ the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of the child from ~~his~~ the home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child and, in the case of a delinquent, the protection of the public.

D. For the purposes of this section and Sections 1102 and 1107 of this title, "responsible adult" means any person over the age of eighteen (18) years, having, assuming or charged with permanent or temporary care or custody of a juvenile, including, but not limited to:

- a. any adult exercising legal guardianship over a juvenile,
- b. an adult who stands in loco parentis to a juvenile,
- c. any person to whom legal custody of a juvenile has been given by order of a court,
- d. any adult who has, assumes or is charged with the care or custody of a juvenile at the request of or on behalf of a parent, guardian, loco parentis or person to whom legal custody has been given by order of a court, or
- e. any adult who has, assumes or is charged with the care or custody of a juvenile at the request of or on behalf of another parent.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1107, as last amended by Section 34, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, 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, without a court order for any criminal offense, 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. 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;

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; and

4. By order of the district court pursuant to subsection F of this section when the child is in need of medical treatment or other action in order to protect the child's health or welfare and the parent, guardian or person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action.

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 or responsible adult, upon the written promise of such parent, guardian, attorney ~~or~~, custodian or responsible adult to bring the child to the court at the time fixed if a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment. In addition, if a parent, guardian, attorney or custodian of the child is notified that the child has been taken into custody, it shall be a misdemeanor for the parent, guardian, attorney or custodian to refuse to assume custody of the child within a timely manner. 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, responsible adult or other person appointed by the court, or be detained pursuant to the provisions of Section 1107.1 of this title in such place as shall be designated by the court, subject to further order.

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

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

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

3. The right to be represented by an attorney at court hearings;

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

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

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

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

to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

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

F. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the child's health or welfare and the parent, guardian or person having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the child's health or welfare, the court may issue an emergency ex parte order upon application of the district attorney of the county in which the child is located. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the child's health or welfare. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, guardian or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall

schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this section, whenever a child is in need of medical treatment to protect the child's health or welfare, or whenever any other action is necessary to protect the child's health or welfare, and the parent, guardian or person having custody or control is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the district attorney of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, guardian or person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, guardian or person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.
- b. 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 subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

SECTION 4. This act shall become effective July 1, 1995.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 4th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate