STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2145 By: Ervin

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 1107.1, as last amended by Section 149, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7304-1.1), which relates to detention; providing exception to detention time limitations under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107.1, as last amended by Section 149, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7304-1.1), is amended to read as follows:

Section 7304-1.1 A. When a child is taken into custody pursuant to the provisions of the Oklahoma Juvenile Code, 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, an order for secure detention shall remain in force and effect for not more than ten (10) days after such order. Upon an application of the district attorney and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed ten (10) days after such hearing. The total period of pre-adjudicatory or predisposition shall not exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

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

of Children Act, shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or who appears to be a child in need of mental health treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care or, with regard to a child who appears to be a child in need of mental health treatment, a mental health facility in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

B. No child shall 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 7302-9.2 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 7302-9.2 of this title; or

6. The child is currently charged with a felony act as defined by Section 7302-9.2 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.

C. A child shall be detained in secure detention only in accordance with the guidelines adopted pursuant to Section 7302-9.3 of this title.

D. 1. Except as otherwise provided in this section, no child shall 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 Office of Juvenile Affairs, 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 Juvenile Justice group home from being held in any jail certified by the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for

transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

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

4. Nothing in this section shall preclude detaining in a county jail or other adult detention facility a person provided for in Section 1104.3 of this title if written or electronically transmitted confirmation is received from the state seeking return of the individual that the person is a person provided for in Section 7304-1.2 of this title and if, during the time of detention, the person is detained in a facility meeting the requirements of 7304-1.3 of this title.

5. Nothing in this section shall preclude detaining a person, whose age is not immediately ascertainable and who is being detained for the commission of a felony, in a jail certified by the State Department of Health, a police station or similar law enforcement office for up to twenty-four (24) hours for the purpose of determining whether or not the person is a child, if:

a. there is a reasonable belief that the person is eighteen (18) years of age or older,

b. there is a reasonable belief that a felony has been committed by the person,

c. a court order for such detention is obtained from a judge of the district court within six (6) hours of initially detaining the person,

d. there is no juvenile detention facility that has space available for the person and that is within thirty (30) miles of the jail, police station, or law enforcement office in which the person is to be detained, and

e. during the time of detention the person is detained in a facility meeting the requirements of subparagraph f of paragraph 1 of this subsection.

The time limitation provided for in this paragraph shall include the time the person is detained prior to the issuance of the court order.

The time limitation provided for in this paragraph shall not include the actual travel time required for transporting the person to the jail, police station, or similar law enforcement office. If the time limitation established by this paragraph is exceeded, this circumstance shall not constitute a defense in any subsequent delinquency or criminal proceeding.

E. Nothing contained in this section shall in any way reduce or eliminate a county's liability as otherwise provided by law for injury or damages resulting from the placement of a child in a jail, adult lockup, or other adult detention facility.

F. Any juvenile detention facility shall be available for use by any eligible Indian child as that term is defined by the Oklahoma Indian Child Welfare Act, providing that the use of the juvenile detention facility meets the requirements of the Oklahoma Juvenile Code. 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 Juvenile Justice.

<u>H. Time limitations for detention stated in this section shall not apply to a child detained for the commission of a murder.</u>

SECTION 2. This act shall become effective November 1, 1996.

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