STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 523

By: Helton and Williams of the Senate

and

Askins of the House

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 644, as amended by Section 2, Chapter 197, O.S.L. 1996 and 1289.12, as amended by Section 50, Chapter 272, O.S.L. 1995 (21 O.S. Supp. 1996, Sections 644 and 1289.12), which relate to assault and battery and giving firearms to incompetent person; amending 22 O.S. 1991, Section 1105, as last amended by Section 25 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to release on bail; amending 10 O.S. 1991, Section 1102, as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7303-1.2), and as last amended by Section 2 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to personal jurisdiction; authorizing consideration of certain conviction in charging a second offense; authorizing safekeeping of weapons in certain

situations; providing for release of certain property; requiring a mandatory cooling-off period for certain persons before release on bail; removing certain authority of municipality; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 644, as amended by Section 2, Chapter 197, O.S.L. 1996 (21 O.S. Supp. 1996, Section 644), is amended to read as follows:

Section 644. A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

C. Any person who commits any assault and battery against a current or former spouse, an individual with whom the defendant has had a child, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail not exceeding one (1) year, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment. Any second or subsequent conviction of domestic abuse shall be a felony punishable by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Every conviction of domestic abuse shall require

as a condition of a suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court. Any conviction of assault and battery in a municipal court which meets the criteria of domestic abuse as specified in this section may be considered sufficient for a first offense for purposes of charging a second or subsequent offense as authorized by this section.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1289.12, as amended by Section 50, Chapter 272, O.S.L. 1995 (21 O.S. Supp. 1996, Section 1289.12), is amended to read as follows:

Section 1289.12

GIVING FIREARMS TO CONVICTED PERSONS

A. It shall be unlawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns or pistols to any convicted felon or an adjudicated delinquent, and it shall be unlawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle or pistol to any individual who is under the influence of alcohol or drugs or is mentally or emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will display this section prominently in full view at or near the point of normal firearms sale, trade or transfer. Any person convicted of violating the provisions of this section shall be punished as provided in Section 1289.15 of this title.

Any person convicted of a violation of this section after having been issued a concealed handgun license pursuant to the Oklahoma Self-Defense Act, ~~Sections 1 through 25~~ Section 1290.1 et seq. of this ~~act~~ title, shall have the license suspended for six (6) months and shall be liable for an administrative fine of Fifty Dollars

($50.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

B. For purposes of this section, any peace officer making contact with a person in possession of any firearms or other weapons is authorized to take possession thereof and hold the weapons for safekeeping if there is probable cause to believe the person who has possession of such weapons is a convicted felon or an adjudicated delinquent, is under the influence of alcohol, drugs or other intoxicating substance, is mentally or emotionally unbalanced or disturbed, is suicidal or is involved in an act of or attempt of domestic abuse. Upon taking possession of any weapons, the peace officer shall hold the same for safekeeping for a period not to exceed thirty (30) days unless legal action is taken in regard to the aforesaid person. It shall be the responsibility of the claiming party to institute the appropriate court action for release of the property. The peace officer and his or her employing agency shall not be civilly liable, and shall not be responsible for any costs or fees for holding such weapons.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1105, as last amended by Section 25 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1105. A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

B. ~~No police officer or sheriff may release a person~~ For persons arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title ~~without the violator appearing before a magistrate, judge or court~~, the police officer or sheriff having custody of the person shall not release such person upon any bail, bond or undertaking until after a mandatory twelve-hour cooling-off period. The magistrate, judge or court shall determine bond and other conditions of release as necessary for the protection of the alleged victim.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1102, as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7303-1.2), and as last amended by Section 2 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 7303-1.2 A. 1. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Section 7303-1.1 of this title, the district court of the county in which a child:

a. resides,

b. is found, or

c. is alleged to be or is found to be in need of supervision,

shall have jurisdiction of any child who is or is alleged to be 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, 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 of Juvenile Justice, as provided in subsection B of Section 7302-5.4 of this title.

3. For the convenience of the parties and in the interest of justice, a proceeding under the Oklahoma Juvenile Code, Section 7301-1.1 et seq. of this title, may be transferred to the district court in any other county.

4. Any arrest or detention under the Oklahoma Juvenile Code or any adjudication in a juvenile proceeding shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.

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 7303-1.1 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 can issue any temporary order or grant any interlocutory relief authorized by this Code notwithstanding the fact that another district court within the state has jurisdiction 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 ~~illegal possession of firearms,~~ vandalism, shoplifting, trespassing, assault, battery, assault and battery, truancy, curfews, possession of low-point beer 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, public intoxication and failure to appear for a court appearance or comply with a court order and any other municipal ordinances as agreed by the district court, the district attorney and the municipality. 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 if the judge determines that the agreement is constitutional and complies with state and federal law. 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 if the judge determines that the agreement is constitutional and complies with state and federal law.

2. A child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to truancy may be held pursuant to Section 10-109 of Title 70 of the Oklahoma Statutes.

3. A child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to curfews may be held temporarily under the custodial care of a peace officer or other person employed by a police department only until the child's parent, legal guardian, legal custodian, attorney or other responsible adult assumes custody or, if such a person cannot be located within a reasonable time of the taking of the child into custody or if such a person refuses to assume custody, until temporary shelter is found for the child. In no event shall the child be placed in a jail, lockup, or detention facility. The temporary custody provided for by this paragraph shall be utilized as a means of returning the child to the child's home or other place of shelter.

4. Notwithstanding any other provision of this Code, a child less than 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 other than truancy or curfew violations, and who can be prosecuted in municipal court for such offense pursuant to jurisdiction assumed by the municipal court pursuant to the provisions of paragraph 1 of this subsection, may be temporarily detained by the municipality in a municipal juvenile facility, as defined by this paragraph, but only pursuant to the following conditions:

a. the municipality shall immediately take all reasonable steps to attempt to locate the child's parent, legal guardian, legal custodian, attorney or another responsible adult and determine if said parent, legal guardian, legal custodian, attorney or other responsible adult 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 the child's parent, legal guardian, legal custodian, attorney or other responsible adult as soon as practicable and upon the written promise of such person to return the child to municipal court to answer the municipal charges on the date and at the time set by the municipal court and to assume responsibility for costs for damages by the child if the child causes damages while committing any acts in violation of municipal ordinances listed in this section after being released. Municipalities may enact ordinances providing penalties for failure to comply with the written promise and for refusal to assume custody of a child in a timely manner,

c. the child shall be detained in the municipal juvenile facility for no longer than twenty-four (24) hours; provided, if the child's parent, legal guardian, legal custodian, attorney or other responsible adult fails to appear at the municipal juvenile facility and assume 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 7303-1.1 of this title,

d. the child shall be provided with adequate fresh drinking water,

e. the child shall be provided with adequate food not less than three times in a twenty-four-hour period,

f. the child shall be provided with adequate bathroom facilities and bedding, and

g. the child shall be provided with any necessary medical care and treatment.

Prior to the temporary detention of any child pursuant to the authority of this subsection, the municipal juvenile facility shall be certified by the Office of Juvenile Affairs pursuant to the applicable certification standards set by the Board of Juvenile Affairs, 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 Juvenile Justice. In furtherance of this subsection, the Office of Juvenile Affairs 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 g, inclusive, of this paragraph, and the Department of Juvenile Justice 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 Office of Juvenile Affairs for performance of the detention services authorized by the provisions of this paragraph. For the purposes of this section, a "municipal juvenile facility" shall mean a secure facility which is entirely separate from any jail, adult lockup, or other adult facility, or is spatially separate if contained inside any jail, adult lockup, or other adult facility which is certified by the Office of Juvenile Affairs 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. In no event shall a juvenile be held in an adult facility that does not meet the definition of a municipal juvenile facility.

5. Pursuant to an interlocal cooperation agreement between a municipality and the district court, as authorized by the provisions of paragraph 1 of this subsection, a child less than eighteen (18) years of age may be charged, prosecuted and, if convicted, fined for violating 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, during any calendar year that any child:

a. fails to appear for a court date on more than one occasion,

b. is convicted of two or more of the offenses listed in paragraph 1 of this subsection, which offenses occurred on different days, or

c. fails to pay any fine or cost properly assessed by a municipal court,

and after the expiration of ninety (90) days, the court clerk shall mail notice of such occurrence to the Department of Public Safety, which department shall thereafter suspend or deny driving privileges for such child for six (6) months. The suspension may be modified as provided in Section 6-107.2 of Title 47 of the Oklahoma Statutes. 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.

6. Any fines and costs properly assessed against any child and which remain unpaid after three (3) months may be assessed by the municipal judge against the child's parent, parents, legal guardian or legal custodian and collected and paid as provided for in Section 27-122 of Title 11 of the Oklahoma Statutes. Provided however, prior to such latter assessment, the court clerk shall give such child's parent, parents, legal guardian or legal custodian notice by certified mail to their place of residence or personal service of such action proposed to be taken.

7. All municipal arrest records, prosecution records, court records, and court proceedings for cases involving children less than 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 Article VII of this Code 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 the provisions of 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 the provisions of subsection E of this section;

3. To fund the costs of detention authorized pursuant to the provisions of subsection E of this section;

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 the provisions of subsection E of this section; and

5. To fund the costs of community intervention centers authorized pursuant to Section 7302-3.5 of this title.

Such earmarked funds shall not be used by the municipality for any purpose other than the purposes set forth in paragraphs 1 through 5 of this subsection.

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.

46-1-7268 LAC