

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1843

By: Benson

AS INTRODUCED

An Act relating to children; amending Section 15, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7003-4.7), which relates to petitions for termination of parent-child relationship and parental rights; modifying circumstances authorizing filing of petition; modifying circumstances authorizing district attorney not to file petition; amending Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 2, Chapter 268, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7301-1.3), which relates to definitions for the Oklahoma Juvenile Code; modifying definition; amending 10 O.S. 1991, Section 607, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as amended by Section 13, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1998, Section 7302-3.5), which relates to community-based youth service programs, shelters and community intervention centers; modifying purposes and procedures relating to community intervention centers; amending Section 11, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 1, Chapter 34, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7302-6.8), which relates to detention beds; exempting detention beds constructed and operated solely through county revenue sources from provisions of the State Plan for the Establishment of Juvenile Detention Services; amending 10 O.S. 1991, Section 1102, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 1, Chapter 127, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7303-1.2), which relates to jurisdiction over juveniles; authorizing holding juveniles in community intervention centers in certain circumstances; amending Section 25, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 29, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7306-2.8), which relates to the Youthful Offender Act; authorizing the court to require persons sentenced as adults to pay a fee for presentence investigation; providing for hardship cases; amending 70 O.S. 1991, Section 10-109, as amended by Section 3, Chapter 270, O.S.L. 1995 (70 O.S. Supp. 1998, Section 10-109), which relates to temporary detention of certain children; authorizing holding juveniles in community intervention centers in certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY Section 15, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7003-4.7), is amended to read as follows:

Section 7003-4.7 A. Except as otherwise provided by this section, the district attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or, if a petition has been filed, shall join in the petition filed by the child's attorney, pursuant to any of the following circumstances:

1. The child has been placed in foster care by the Department of Human Services for fifteen (15) of the most recent twenty-two (22) months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the date of adjudication ~~date~~ as a deprived child, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

2. The child has been placed in foster care by the Department of Juvenile Justice or in a child-care institution, as defined in Section 472(c) (2) of the Social Security Act, by the Department of Juvenile Justice for fifteen (15) of the most recent twenty-two (22) months. For purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of:

- a. the date of disposition as a delinquent, or
- b. the date that is sixty (60) days after the date on which the child is removed from the home;

3. The child has been judicially determined to be an abandoned infant;

~~3.~~ 4. A court has determined that the parent has committed the murder of any child or has aided or abetted, attempted, conspired in, or solicited the commission of the murder of any child;

~~4.~~ 5. A court has determined that the parent has committed voluntary manslaughter of another child of the parent, or has aided or abetted, attempted, conspired in, or solicited the commission of voluntary manslaughter of another child of the parent; or

~~5.~~ 6. A court has determined that the parent has committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent.

B. If any of the following conditions exist, the district attorney is not required to file a petition as provided in subsection A of this section for a deprived child:

1. At the option of the Department of Human Services or by order of the court, the child is properly being cared for by a relative;

2. The Department of Human Services has documented in the child's case plan that is provided or available to the court a compelling reason for determining that filing the petition would not be in the best interests of the child; or

3. The state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child.

C. If any of the following conditions exist, the district attorney is not required to file a petition as provided in subsection A of this section for a delinquent child:

1. At the option of the Department of Juvenile Justice or by order of the court, the child is properly being cared for by a relative; or

2. The Department of Juvenile Justice has documented in the child's case plan that is provided or available to the court a compelling reason for determining that filing the petition would not be in the best interests of the child.

SECTION 2. AMENDATORY Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 2, Chapter 268, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7301-1.3), is amended to read as follows:

Section 7301-1.3 When used in the Oklahoma Juvenile Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Article III of the Oklahoma Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

2. "Alternatives to secure detention" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Board of Juvenile Affairs and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. "Board" means the Board of Juvenile Affairs;

4. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 7306-1.1 of this title, or any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree pursuant to subsection B of Section 7306-1.1 of this title or Section 7306-2.5 of this title, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of this title, or any individual against whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of this title, any individual against whom the imposition of judgment and sentence has been deferred after certification as an adult pursuant to Section 7303-4.3 of this title, or any person fifteen (15) years of age or older and charged or certified as a youthful offender

pursuant to the Youthful Offender Act; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 7306-1.1 of this title, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of this title, or any individual who is not convicted as a youthful offender pursuant to the Youthful Offender Act, shall continue to be subject to the jurisdiction of the juvenile court;

5. "Child or juvenile in need of mental health treatment" means a juvenile in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act;

6. "Child or juvenile in need of supervision" means a juvenile who:

- a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,
- b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,
- c. is willfully and voluntarily absent from school, as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the juvenile is subject to compulsory school attendance, or
- d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

7. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the juvenile, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not

limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

8. "Community intervention center" means a facility which serves as a ~~receiving center for children who are taken into custody and which performs at least one of the functions~~ short term reception facility to receive and hold juveniles, as provided for in subsection D of Section 7302-3.5 of this title;

9. "Community residential center" means a residential facility for no more than twenty juveniles which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community;

10. "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

11. "Delinquent child or juvenile" means a juvenile who:

- a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, the Oklahoma Vessel and Motor Regulation Act or the Oklahoma Boating Safety Regulation Act, or has violated any lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or
- b. has habitually violated traffic laws, traffic ordinances or boating safety laws or rules;

12. "Department" means the Department of Juvenile Justice;

13. "Deputy Director" means the Deputy Director of the Department of Juvenile Justice;

14. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

15. "Executive Director" means the Executive Director of the Office of Juvenile Affairs;

16. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles. A facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

17. "Group home" means a residential facility housing no more than twelve juveniles with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents. A group home shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

18. "Independent living program" means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

19. "Institution" means a residential facility offering care and treatment for more than twenty residents. An institution shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident;

20. "Juvenile detention facility" means a secure facility which meets the certification standards of the Department and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. A juvenile detention facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

21. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

22. "Office" means the Office of Juvenile Affairs;

23. "Person responsible for a juvenile's health or welfare" includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

24. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Oklahoma Juvenile Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

25. "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a Department of Juvenile Justice facility directly or by contract under prescribed conditions and under supervision by the Department,

subject to return to the court for violation of any of the conditions prescribed;

26. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

27. "Secure detention" means the temporary care of juveniles who require secure custody in physically restricting facilities:

- a. while under the continuing jurisdiction of the court pending court disposition, or
- b. pending placement by the Department of Juvenile Justice after adjudication;

28. "Training school" or "secure facility" means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which relies on locked rooms and buildings, and fences for physical restraint in order to control behavior of its residents. A training school or secure facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes; and

29. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 607, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as amended by Section 13, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1998, Section 7302-3.5), is amended to read as follows:

Section 7302-3.5 A. The Department of Juvenile Justice is authorized to enter into agreements to establish or maintain community-based youth service programs, shelters and community intervention centers out of local, state and federal monies.

B. The Department shall take all necessary steps to develop and implement a diversity of community services and community residential care as needed to provide for adequate and appropriate community-based care, treatment and rehabilitation of children in the custody of the Department. Such community services and residential care shall be consistent with the treatment needs of the child and the protection of the public.

1. The Department shall, to the extent reasonable and practicable, provide community services, community residential care and community intervention centers to children in the custody of the Department through financial agreements, as authorized in Sections 7302-3.3 and 7302-3.4 of this title.

2. The Department shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services, community residential care and community intervention centers. A copy of such procedures shall be made available to any member of the general public upon request.

C. Any state agency letting grants or contracts for the establishment of community residential care or treatment facilities for children shall require, as a condition for receipt of such grants or contracts, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been made for providing the educational services to which residents of the facility are entitled pursuant to state and federal law.

D. 1. The Department shall implement a pilot program for establishment and continued operation of community intervention

centers. The centers shall be established pursuant to interlocal agreements between one or more municipalities, ~~a service provider~~ and the Office of Juvenile Affairs pursuant to rules promulgated by the Office. ~~The program shall provide for selection of the provider by the municipality~~ may enter into subcontracts with one or more service providers, with subject to the approval by the Office of Juvenile Affairs. The service provider, whether a municipality or other entity, must have access to the management information system provided for in Section 7302-3.8 of this title and must employ qualified staff, as determined by the Office of Juvenile Affairs.

2. ~~The community intervention center shall perform at least one of the following functions: assessment, information gathering, processing, service as a center for law enforcement to bring children who have been taken into custody, and service as a facility for limited short-term holding for a period not to exceed twenty-four (24) hours, unless extended by a court of competent jurisdiction for a period not to exceed forty-eight (48) additional hours. Community intervention centers also may work with community-based organizations, neighborhoods, and municipal organizations to implement violence prevention programs and programs to reduce violence in the community, if this function is provided for in the interlocal agreement~~ serve as a short term reception facility to receive and hold juveniles who have been taken into custody by law enforcement agencies and for whom detention is inappropriate or unavailable. The community intervention center may be a secure facility. Juveniles held in the community intervention facility shall not be isolated from common areas other than for short-term protective holding for combative or self-destructive behavior, as defined by the Office of Juvenile Affairs.

3. Juveniles shall not be held in a community intervention center for more than twenty-four (24) hours.

4. The community intervention center shall perform the following functions:

- a. enter demographic information into the management information system provided for in Section 7302-3.8 of this title,
- b. immediately notify the parents or parent, guardian, or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable the adult with whom the child resides, that the child has been taken into custody and to pick up the juvenile,
- c. hold juveniles until they can be released to a parent, guardian, or other responsible adult or until a temporary placement can be secured, but in no event for longer than twenty-four (24) hours, and
- d. conduct an assessment to obtain information pursuant to parameters established by rules promulgated by the Office of Juvenile Affairs for the purpose of developing recommendations to correct the behavior of the juvenile or to divert the progression of the juvenile into the juvenile justice system and to determine if the juvenile is in need of immediate medical attention or is a victim of violence.

5. Community intervention centers shall provide information to a juvenile's parent, guardian, or responsible adult about local resources and services available for youth and their families. Community intervention centers also may work with community-based organizations to implement violence prevention programs and programs to reduce violence in the community, if this is provided for in the interlocal agreement.

6. Community intervention centers shall be certified pursuant to standards established and rules promulgated by the Office of Juvenile Affairs.

SECTION 4. AMENDATORY Section 11, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 1, Chapter 34, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7302-6.8), is amended to read as follows:

Section 7302-6.8 A. Beginning July 1, 1995, the Office of Juvenile Justice shall oversee the expansion of the number of preadjudicatory secure detention beds available in this state. By July 1, 1996, the number of such beds shall be increased by one hundred nine beds or by the number necessary to result in a total of two hundred sixty-five such beds. It is the intent of the Legislature to establish such beds on a geographic basis throughout the state in order to provide more accessibility to services for all regions of the state. Therefore, such beds shall be established as follows: In Oklahoma County thirty-seven beds, in Tulsa County twenty-six beds, in Cleveland County twelve beds, in Lincoln County ten beds, in Comanche County six beds, in Beckham County six beds, in Texas County six beds and in Talihina in LeFlore County six beds. The six beds in Comanche County shall be regional detention beds and out-of-county placements shall be given priority for these beds. The beds established by this subsection shall be operated in accordance with Section 7304-1.3 of this title.

B. Effective July 1, 1995, the responsibilities for establishing and operating a regional juvenile facility in the southwestern part of the state shall be transferred to the Office of Juvenile Affairs. The facility shall include six transitional beds and sixty-four medium secure beds for such programs as the Department of Juvenile Justice determines will most appropriately and effectively provide required services; provided, no more than thirty-two beds shall be used for any one type of program. It is

the intent of the Legislature that the Department of Juvenile Justice locate an existing facility that can be remodeled and used for this purpose.

C. Beginning July 1, 1998, detention beds constructed and operated by a county solely through revenues from county sources shall be exempt from the provisions of subparagraph 6 of Section 7302-9.3 of this title and from the provisions of the State Plan for the Establishment of Juvenile Detention Services adopted pursuant to subsection D of Section 7304-1.3 of this title.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 1102, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 1, Chapter 127, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7303-1.2), 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 any municipal ordinance 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; provided however, this provision shall not restrict or prohibit placing the child in a community intervention center pursuant to Section 7302-3.5 of this title. 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, 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 for which provision is made 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 or in addition to a fine if the product of multiplying the number of hours of community service work by the prevailing minimum wage plus any fine imposed does not result in a number which exceeds the maximum fine authorized by law, or restitution, or both community service work and restitution. If the child fails to complete the community service, a parent or guardian of the child who knew or should have known that the child failed to complete the community service may be fined an amount that is equal to the number of community service hours that are uncompleted by the child multiplied by the hourly minimum wage amount. 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 municipal offenses for which provision is made 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 Articles XXVII and XXVIII 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 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. Municipal conviction records involving children less than eighteen (18) years of age convicted of violating municipal ordinances shall be open to public inspection.

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 6. AMENDATORY Section 25, Chapter 290, O.S.L. 1994, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 29, Chapter 293, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7306-2.8), is amended to read as follows:

Section 7306-2.8 A. Whenever the district attorney believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the district attorney shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not less than ten (10) days prior to the trial; or
2. At the time of a guilty plea or plea of nolo contendere.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the Department of Juvenile Justice.

2. At the hearing the court shall consider:

- a. the seriousness of the alleged offense to the community, and whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons or property, greater weight being given for offenses against persons and, if personal injury resulted, the degree of injury,
- c. the sophistication and maturity of the accused person and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living,
- d. the record of the person including previous involvements with law enforcement agencies or courts, or prior periods of probation or prior commitments to institutions for delinquent behavior, and the previous history of the person with community agencies and schools,
- e. the prospects for adequate protection of the public,
- f. the likelihood of reasonable rehabilitation of the youthful offender if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the court if the

accused person is processed through the youthful offender system, and

- g. whether the offense occurred while the person was escaping from a secure facility for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

E. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Oklahoma Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of supervision, incarceration and in all subsequent criminal proceedings.

F. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the Department of Juvenile Justice of not less than Five Dollars (\$5.00), nor more than Two Hundred Fifty Dollars (\$250.00), for the presentence investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

SECTION 7. AMENDATORY 70 O.S. 1991, Section 10-109, as amended by Section 3, Chapter 270, O.S.L. 1995 (70 O.S. Supp. 1998, Section 10-109), is amended to read as follows:

Section 10-109. A. An attendance officer, any school administrator, or designee of the school administrator who is employed by the school, or any peace officer may, except for children being home schooled pursuant to Section 10-105 of the Oklahoma Statutes, temporarily detain and assume temporary custody of any child subject to compulsory full-time education, during hours in which school is actually in session, who is found away from the home of such child and who is absent from school without lawful excuse within the school district that such attendance officer, peace officer or school official serves, if said school district has previously approved the temporary detention and custody pursuant to this section.

B. Any person temporarily detaining and assuming temporary custody of a child pursuant to this section shall immediately deliver the child either to the parent, guardian, or other person having control or custody of the child, or to the school from which the child is absent without valid excuse, or to a nonsecure youth service or community center servicing the school district, or to a community intervention center, as defined by Section 7301-1.3 of Title 10 of the Oklahoma Statutes.

C. The temporary custody or detention provided by this section shall be utilized as a means of reforming and returning the truant students to school and shall not be used as a pretext for investigating criminal matters. The temporary custody or detention herein provided is a severely limited type of detention and is not justified unless there are specific facts causing an attendance officer or other authorized person to reasonably suspect that a truancy violation is occurring and that the person the officer intends to detain is a truant.

SECTION 8. This act shall become effective November 1, 1999.

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