

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3214

By: Lawson

AS INTRODUCED

An Act relating to children, amending 10A O.S. 2011, Section 2-3-101, as last amended by Section 2, Chapter 234, O.S.L. 2016 (10A O.S. Supp. 2019, Section 2-3-101), which relates to detention of children in adult facilities; requiring hearing and certain findings before confinement of child in adult facility; establishing factors for court to consider; prohibiting detainment of children in adult facilities under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-3-101, as last amended by Section 2, Chapter 234, O.S.L. 2016 (10A O.S. Supp. 2019, Section 2-3-101), is amended to read as follows:

Section 2-3-101. 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 preadjudicatory or predisposition detention or custody order shall remain in force and effect for

1 more than thirty (30) days. The court, for good and
2 sufficient cause shown, may extend the effective
3 period of such an order for an additional period not
4 to exceed sixty (60) days. If the child is being
5 detained for the commission of a murder, the court
6 may, if it is in the best interests of justice, extend
7 the effective period of such an order an additional
8 sixty (60) days.

9 b. Whenever the court orders a child to be held in a
10 juvenile detention facility, an order for secure
11 detention shall remain in force and effect for not
12 more than fifteen (15) days after such order. Upon an
13 application of the district attorney and after a
14 hearing on such application, the court, for good and
15 sufficient cause shown, may extend the effective
16 period of such an order for an additional period not
17 to exceed fifteen (15) days after such hearing. The
18 total period of preadjudicatory or predisposition
19 shall not exceed the ninety-day limitation as
20 specified in subparagraph a of this paragraph. The
21 child shall be present at the hearing on the
22 application for extension unless, as authorized and
23 approved by the court, the attorney for the child is
24 present at the hearing and the child is available to

1 participate in the hearing via telephone conference
2 communication. For the purpose of this paragraph,
3 "telephone conference communication" means use of a
4 telephone device that allows all parties, including
5 the child, to hear and be heard by the other parties
6 at the hearing. After the hearing, the court may
7 order continued detention in a juvenile detention
8 center, may order the child detained in an alternative
9 to secure detention or may order the release of the
10 child from detention.

11 2. No child alleged or adjudicated to be deprived or in need of
12 supervision or who is or appears to be a minor in need of treatment
13 as defined by the Inpatient Mental Health and Substance Abuse
14 Treatment of Minors Act, shall be confined in any jail, adult
15 lockup, or adult detention facility. No child shall be transported
16 or detained in association with criminal, vicious, or dissolute
17 persons.

18 3. Except as otherwise authorized by this section a child who
19 has been taken into custody as a deprived child, a child in need of
20 supervision, or who appears to be a minor in need of treatment, may
21 not be placed in any detention facility pending court proceedings,
22 but must be placed in shelter care or foster care or, with regard to
23 a child who appears to be a minor in need of treatment, a behavioral
24 health treatment facility in accordance with the provisions of the

1 Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
2 or released to the custody of the parents of the child or some other
3 responsible party. Provided, this shall not preclude runaway
4 juveniles from other states, with or without delinquent status, to
5 be held in a detention facility in accordance with the Interstate
6 Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this
7 title and rules promulgated by the Interstate Commission.

8 B. No child shall be placed in secure detention unless:

9 1. The child is an escapee from any delinquent placement;

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

13 3. The child is seriously assaultive or destructive towards
14 others or self;

15 4. The child is currently charged with any criminal offense
16 that would constitute a felony if committed by an adult or a
17 misdemeanor and:

18 a. is on probation or parole on a prior delinquent
19 offense,

20 b. is on preadjudicatory community supervision, or

21 c. is currently on release status on a prior delinquent
22 offense;

1 5. The child has willfully failed or there is reason to believe
2 that the child will willfully fail to appear for juvenile court
3 proceedings;

4 6. A warrant for the child has been issued on the basis that:

5 a. the child is absent from court-ordered placement
6 without approval by the court,

7 b. the child is absent from designated placement by the
8 Office of Juvenile Affairs without approval by the
9 Office of Juvenile Affairs,

10 c. there is reason to believe the child will not remain
11 at said placement, or

12 d. the child is subject to an administrative transfer or
13 parole revocation proceeding.

14 C. A child who has violated a court order and has had the order
15 revoked or modified pursuant to Section 2-2-503 of this title may be
16 placed into an Office-of-Juvenile-Affairs-designated sanction
17 detention bed or an Office-of-Juvenile-Affairs-approved sanction
18 program.

19 D. Priority shall be given to the use of juvenile detention
20 facilities for the detention of juvenile offenders through
21 provisions requiring the removal from detention of a juvenile with a
22 lower priority status if an empty detention bed is not available at
23 the time of referral of a juvenile with a higher priority status and
24 if the juvenile with a higher priority status would be more of a

1 danger to the public than the juvenile with the lower priority
2 status.

3 E. Juvenile detention facilities shall be the default placement
4 for all children. No child, including any child fifteen (15)
5 through seventeen (17) years old alleged to have committed the
6 offense of murder in the first degree, shall be placed in secure
7 detention in a jail, adult lockup or other adult detention facility,
8 or have sight or sound contact with adult inmates, without a hearing
9 in which the child is provided representation and a written court
10 order stating that it is in the interest of justice that the child
11 be placed in a jail, adult lockup or other adult detention facility
12 or be allowed sight or sound contact with adult inmates, except as
13 provided in subsection H of this section.

14 1. In determining whether it is in the interest of justice that
15 the child be placed in a jail, adult lockup or other adult detention
16 facility, or be allowed sight or sound contact with adult inmates,
17 the court shall consider:

- 18 a. the age of the child,
- 19 b. the physical and mental state of the child, including
20 whether the child presents an imminent risk of harm to
21 himself or herself,
- 22 c. the nature and circumstances of the alleged offense,
- 23 d. the child's history of prior delinquent acts,

- 1 e. the relative ability of the available adult detention
2 facilities to not only meet the specific needs of the
3 child but also to protect the safety of the public as
4 well as other detained youth, and
5 f. any other relevant factors.

6 2. If a court determines that it is in the interest of justice
7 that the child be placed in a jail, adult lockup or other adult
8 detention facility or be allowed sight or sound contact with adult
9 inmates:

- 10 a. the court shall hold a hearing not less frequently
11 than once every thirty (30) days, or in the case of a
12 rural jurisdiction, which is any jurisdiction not
13 located in a metropolitan statistical area, as defined
14 by the United States Office of Management and Budget,
15 not less frequently than once every forty-five (45)
16 days, to review whether it is still in the interest of
17 justice to permit the juvenile to be so held or have
18 such sight or sound contact, and
19 b. the child shall not be held in any jail or lockup for
20 adults, or be permitted to have sight or sound contact
21 with adult inmates, for more than one hundred eighty
22 (180) days, unless the court, in writing, determines
23 there is good cause for an extension or the child
24 expressly waives this limitation.

1 F. Children who are fourteen (14) years old and younger alleged
2 to have committed murder in the first degree shall be held in
3 juvenile detention. Children fourteen (14) years old or younger who
4 are subject to the provisions under subsection H of Section 2-5-204
5 of this title shall not be placed in any jail, adult lockup or other
6 adult detention facility unless convicted as an adult.

7 G. When a child is placed in a jail, adult lockup, or other
8 adult detention facility, he or she shall be afforded the following
9 rights and protections in order to address the child's health and
10 safety:

11 1. A copy of the child's most current mental health or suicide
12 screening instrument approved by the Office of Juvenile Affairs
13 shall be provided to the jail, adult lockup or detention facility at
14 the time of the child's transfer.

15 2. Adult detention facilities shall process requests by parents
16 or guardians to visit with a child within five (5) business days.

17 H. 1. Except as otherwise provided in this section, no child
18 shall be placed in secure detention in a jail, adult lockup, or
19 other adult detention facility unless:

20 a. the child is detained for the commission of a crime
21 that would constitute a felony if committed by an
22 adult, and

23 b. the child is awaiting an initial court appearance, and
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- 1 c. the initial court appearance of the child is scheduled
2 within twenty-four (24) hours after being taken into
3 custody, excluding weekends and holidays, and
- 4 d. the court of jurisdiction is outside of the Standard
5 Metropolitan Statistical Area as defined by the Bureau
6 of Census, and
- 7 e. there is no existing acceptable alternative placement
8 for the child, and
- 9 f. the jail, adult lockup or adult detention facility
10 provides sight and sound separation for juveniles,
11 pursuant to standards required by subsection E of
12 Section 2-3-103 of this title, or
- 13 g. the jail, adult lockup or adult detention facility
14 meets the requirements for licensure of juvenile
15 detention facilities, as adopted by the Office of
16 Juvenile Affairs, is appropriately licensed, and
17 provides sight and sound separation for juveniles,
18 which includes:
- 19 (1) total separation between juveniles and adult
20 facility spatial areas such that there could be
21 no haphazard or accidental contact between
22 juvenile and adult residents in the respective
23 facilities,
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1 (2) total separation in all juvenile and adult
2 program activities within the facilities,
3 including recreation, education, counseling,
4 health care, dining, sleeping and general living
5 activities, and

6 (3) separate juvenile and adult staff, specifically
7 direct care staff such as recreation, education
8 and counseling.

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

14 2. Nothing in this section shall preclude a child who is
15 detained for the commission of a crime that would constitute a
16 felony if committed by an adult, or a child who is an escapee from a
17 juvenile secure facility or from an Office of Juvenile Affairs group
18 home from being held in any jail certified by the State Department
19 of Health, police station or similar law enforcement offices for up
20 to six (6) hours for purposes of identification, processing or
21 arranging for transfer to a secure detention or alternative to
22 secure detention. Such holding shall be limited to the absolute
23 minimum time necessary to complete these actions.

1 a. The time limitations for holding a child in a jail for
2 the purposes of identification, processing or
3 arranging transfer established by this section shall
4 not include the actual travel time required for
5 transporting a child from a jail to a juvenile
6 detention facility or alternative to secure detention.

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

11 3. Nothing in this section shall preclude detaining in a county
12 jail or other adult detention facility an eighteen-year-old charged
13 in a juvenile petition for whom certification to stand trial as an
14 adult is prayed. However, if no certification motion is filed, the
15 eighteen-year-old may remain in a juvenile detention facility as
16 long as secure detention is required.

17 4. Nothing in this section shall preclude detaining in a county
18 jail or other adult detention facility a person provided for in
19 Section 2-3-102 of this title if written or electronically
20 transmitted confirmation is received from the state seeking return
21 of the individual that the person is a person provided for in
22 Section 2-3-102 of this title and if, during the time of detention,
23 the person is detained in a facility meeting the requirements of
24 Section 2-3-103 of this title.

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

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

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

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

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

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

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

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

7 ~~F.~~ I. Nothing contained in this section shall in any way reduce
8 or eliminate the liability of a county as otherwise provided by law
9 for injury or damages resulting from the placement of a child in a
10 jail, adult lockup, or other adult detention facility.

11 ~~G.~~ J. Any juvenile detention facility shall be available for
12 use by any eligible Indian child as that term is defined by the
13 Oklahoma Indian Child Welfare Act, providing that the use of the
14 juvenile detention facility meets the requirements of the Oklahoma
15 Juvenile Code. The Indian tribe may contract with any juvenile
16 detention facility for the providing of detention services.

17 ~~H.~~ K. Each member of the staff of a juvenile detention facility
18 shall satisfactorily complete a training program provided or
19 approved by the Office of Juvenile Affairs.

20 ~~I.~~ L. Whenever a juvenile is placed in any jail, adult lockup,
21 or other detention facility, the Office of Juvenile Affairs shall
22 have access to all facilities which detain such juveniles and shall
23 have access to any data regarding such juveniles. The Office of
24 Juvenile Affairs shall have access to all jails, adult lockups, or

1 other adult facilities in this state, including all data maintained
2 by such facilities, to assure compliance with this section. The
3 Board of Juvenile Affairs shall promulgate rules as necessary to
4 implement the provisions of this section.

5 SECTION 2. This act shall become effective November 1, 2020.

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