

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3205

By: Talley and **Williams**

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9 COMMITTEE SUBSTITUTE

10 An Act relating to fees and costs; amending 10A O.S.
11 2021, Sections 2-2-301 and 2-2-503, which relate to
12 the Oklahoma Juvenile Code; modifying provisions
13 related to costs of representation in certain
14 proceedings; modifying provisions related to
15 probation fees; amending 19 O.S. 2021, Section 138.5,
16 which relates to proceedings involving minors;
17 removing application fees; repealing 10A O.S. 2021,
18 Section 2-2-509, which relates to certain fees and
19 costs with respect to juveniles; providing an
20 effective date; and declaring an emergency.

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

22 SECTION 1. AMENDATORY 10A O.S. 2021, Section 2-2-301, is
23 amended to read as follows:

24 Section 2-2-301. A. No information gained by a custodial
interrogation of a youthful offender under sixteen (16) years of age
or a child nor any evidence subsequently obtained as a result of
such interrogation shall be admissible into evidence against the

1 youthful offender or child unless the custodial interrogation about
2 any alleged offense by any law enforcement officer or investigative
3 agency, or employee of the court, or employee of the Office of
4 Juvenile Affairs is done in the presence of the parents, guardian,
5 attorney, adult relative, adult caretaker, or legal custodian of the
6 youthful offender or child. No such custodial interrogation shall
7 commence until the youthful offender or child and the parents,
8 guardian, attorney, adult relative, adult caretaker, or legal
9 custodian of the youthful offender or child have been fully advised
10 of the constitutional and legal rights of the youthful offender or
11 child, including the right to be represented by counsel at every
12 stage of the proceedings, and the right to have counsel appointed by
13 the court if the parties are without sufficient financial means;
14 provided, however, that no legal aid or other public or charitable
15 legal service shall make claim for compensation as contemplated
16 herein. It is further provided that where private counsel is
17 appointed in such cases, the court shall set reasonable compensation
18 and order the payment out of the court fund. As used in this
19 section, "custodial interrogation" means questioning of a youthful
20 offender under sixteen (16) years of age or child while that
21 youthful offender or child is in law enforcement custody or while
22 that youthful offender or child is being deprived of freedom of
23 action in any significant way by a law enforcement officer, employee
24 of the court, or employee of the Office. Custodial interrogation

1 shall conform with all requirements for interrogation of adult
2 criminal offenders. The term "custodial interrogation" shall not be
3 deemed to mean questioning of a youthful offender or child by a
4 public school administrator or teacher, so long as such questioning
5 is not being conducted on behalf of a law enforcement officer, an
6 employee of the court or an employee of the Office. Any information
7 gained from noncustodial questioning of a child or youthful offender
8 by a public school administrator or teacher concerning a wrongful
9 act committed on public school property shall be admissible into
10 evidence against the youthful offender or child.

11 B. A custodial interrogation of a youthful offender over
12 sixteen (16) years of age shall conform with all the requirements
13 for the interrogation of an adult.

14 C. If the youthful offender or child is not otherwise
15 represented by counsel, whenever a petition is filed pursuant to the
16 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this
17 title, the court shall appoint an attorney, who shall not be a
18 district attorney, for the youthful offender or child regardless of
19 any attempted waiver by the parent or other legal custodian of the
20 youthful offender or child of the right of the youthful offender or
21 child to be represented by counsel. The youthful offender or child
22 shall be represented by counsel at every hearing or review through
23 completion or dismissal of the case. Counsel shall be appointed by
24 the court only upon determination by the court that the parent,

1 legal guardian or legal custodian is found to be indigent. If
2 indigency is established, the Oklahoma Indigent Defense System shall
3 represent the child in accordance with Section 1355.6 of Title 22 of
4 the Oklahoma Statutes or the applicable office of the county
5 indigent defender shall represent the child in accordance with
6 Section 138.5 of Title 19 of the Oklahoma Statutes. Provided, if
7 the parent or legal guardian of a child is not indigent but refuses
8 to employ counsel, the court shall appoint counsel to represent the
9 child at detention hearings until counsel is provided. ~~Costs of~~
10 ~~representation shall be imposed on the parent or other legal~~
11 ~~custodian as provided by Section 138.10 of Title 19 of the Oklahoma~~
12 ~~Statutes.~~ Thereafter, the court shall not appoint counsel for a
13 child with a nonindigent parent or legal custodian and shall order
14 the parent or legal custodian to obtain counsel. A parent or legal
15 custodian of an indigent child who has been ordered to obtain
16 counsel for the child and who willfully fails to follow the court
17 order shall be found in indirect contempt of court.

18 D. In all cases of juvenile delinquency, adult certification,
19 reverse certification, or youthful offender proceedings and appeals,
20 or any other proceedings and appeals pursuant to the Oklahoma
21 Juvenile Code, except mental health or in-need-of-supervision
22 proceedings and appeals, and any other juvenile proceedings that are
23 civil in nature, and other than in counties where the office of the
24 county indigent defender is appointed, the Oklahoma Indigent Defense

1 System shall be appointed to represent indigent juveniles as
2 provided for in the Indigent Defense Act. In all other cases
3 pursuant to this title, including juvenile proceedings that are
4 civil in nature, juvenile mental health or in-need-of-supervision
5 proceedings and appeals, with the exception of proceedings in
6 counties where the office of the county indigent defender is
7 appointed, the court shall, if counsel is appointed and assigned,
8 allow and direct to be paid from the local court fund a reasonable
9 and just compensation to the attorney or attorneys for such services
10 as they may render; provided, that any attorney appointed pursuant
11 to this subsection shall not be paid a sum in excess of One Hundred
12 Dollars (\$100.00) for services rendered in preliminary proceedings,
13 Five Hundred Dollars (\$500.00) for services rendered during trial,
14 and One Hundred Dollars (\$100.00) for services rendered at each
15 subsequent post-disposition hearing.

16 E. Counsel for the child shall advise the child and advocate
17 the expressed wishes of the child, as much as reasonably possible,
18 under the same ethical obligations as if the client were an adult.
19 Upon motion by the state, the child, the attorney for the child, or
20 a parent or legal custodian of the child, the court shall appoint a
21 guardian ad litem.

22 F. The guardian ad litem shall not be a district attorney, an
23 employee of the office of the district attorney, an employee of the
24 court, an employee of a juvenile bureau, or an employee of any

1 public agency having duties or responsibilities towards the child.
2 The guardian ad litem shall be given access to the court file and
3 access to all records and reports relevant to the case and to any
4 records and reports of examination of the child's parent or other
5 custodian, made pursuant to this section or Section 1-2-101 of this
6 title. Provided, nothing in this subsection shall obligate counsel
7 for the child to breach attorney-client confidentiality with the
8 child.

9 SECTION 2. AMENDATORY 10A O.S. 2021, Section 2-2-503, is
10 amended to read as follows:

11 Section 2-2-503. A. The following kinds of orders of
12 disposition may be made in respect to children adjudicated in need
13 of supervision or delinquent:

14 1. The court may place the child on probation with or without
15 supervision in the home of the child, or in the custody of a
16 suitable person, upon such conditions as the court shall determine.
17 If the child is placed on probation in a county having a juvenile
18 bureau, the court may impose a probation fee of not more than
19 Twenty-five Dollars (\$25.00) per month, if the court finds that the
20 child or parent or legal guardian of the child has the ability to
21 pay the fee. In counties having a juvenile bureau, the fee shall be
22 paid to the juvenile bureau; in all other counties, ~~the~~ no fee shall
23 be paid to the Office of Juvenile Affairs;

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1 2. If it is consistent with the welfare of the child, the child
2 shall be placed with the parent or legal guardian of the child, but
3 if it appears to the court that the conduct of such parent,
4 guardian, legal guardian, stepparent or other adult person living in
5 the home has contributed to the child becoming delinquent or in need
6 of supervision, the court may issue a written order specifying
7 conduct to be followed by such parent, guardian, legal custodian,
8 stepparent or other adult person living in the home with respect to
9 such child. The conduct specified shall be such as would reasonably
10 prevent the child from continuing to be delinquent or in need of
11 supervision.

12 a. If it is consistent with the welfare of the child, in
13 cases where the child has been adjudicated to be in
14 need of supervision due to repeated absence from
15 school, the court may order counseling and treatment
16 for the child and the parents of the child to be
17 provided by the local school district, the county, the
18 Office or a private individual or entity. Prior to
19 final disposition, the court shall require that it be
20 shown by the appropriate school district that a child
21 found to be truant has been evaluated for learning
22 disabilities, hearing and visual impairments and other
23 impediments which could constitute an educational
24 handicap or has been evaluated to determine whether

1 the child has a disability if it is suspected that the
2 child may require special education services in
3 accordance with the Individuals with Disabilities
4 Education Act (IDEA). The results of such tests shall
5 be made available to the court for use by the court in
6 determining the disposition of the case.

7 b. In issuing orders to a parent, guardian, legal
8 guardian, stepparent or other adult person living in
9 the home of a child adjudicated to be a delinquent
10 child or in making other disposition of said
11 delinquent child, the court may consider the testimony
12 of said parent, guardian, legal guardian, stepparent
13 or other adult person concerning the behavior of the
14 juvenile and the ability of such person to exercise
15 parental control over the behavior of the juvenile.

16 c. In any dispositional order involving a child age
17 sixteen (16) or older, the court shall make a
18 determination, where appropriate, of the services
19 needed to assist the child to make the transition to
20 independent living.

21 d. No child who has been adjudicated in need of
22 supervision only upon the basis of truancy or
23 noncompliance with the mandatory school attendance law
24 shall be placed in a public or private institutional

1 facility or be removed from the custody of the lawful
2 parent, guardian or custodian of the child.

3 e. Nothing in the Oklahoma Juvenile Code or the Oklahoma
4 Children's Code may be construed to prevent a child
5 from being adjudicated both deprived and delinquent if
6 there exists a factual basis for such a finding;

7 3. The court may commit the child to the custody of a private
8 institution or agency, including any institution established and
9 operated by the county, authorized to care for children or to place
10 them in family homes. In committing a child to a private
11 institution or agency, the court shall select one that is licensed
12 by any state department supervising or licensing private
13 institutions and agencies; or, if such institution or agency is in
14 another state, by the analogous department of that state. Whenever
15 the court shall commit a child to any institution or agency, it
16 shall transmit with the order of commitment a summary of its
17 information concerning the child, and such institution or agency
18 shall give to the court such information concerning the child as the
19 court may at any time require;

20 4. The court may order the child to receive counseling or other
21 community-based services as necessary;

22 5. The court may commit the child to the custody of the Office
23 of Juvenile Affairs. Any order adjudicating the child to be
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1 delinquent and committing the child to the Office of Juvenile
2 Affairs shall be for an indeterminate period of time;

3 6. If the child has been placed outside the home, and it
4 appears to the court that the parent, guardian, legal custodian, or
5 stepparent, or other adult person living in the home has contributed
6 to the child becoming delinquent or in need of supervision, the
7 court may order that the parent, guardian, legal custodian,
8 stepparent, or other adult living in the home be made subject to any
9 treatment or placement plan prescribed by the Office or other person
10 or agency receiving custody of the child;

11 7. With respect to a child adjudicated a delinquent child, the
12 court may:

13 a. for acts involving criminally injurious conduct as
14 defined in Section 142.3 of Title 21 of the Oklahoma
15 Statutes, order the child to pay a victim compensation
16 assessment in an amount not to exceed that amount
17 specified in Section 142.18 of Title 21 of the
18 Oklahoma Statutes. The court shall forward a copy of
19 the adjudication order to the Crime Victims
20 Compensation Board for purposes of Section 142.11 of
21 Title 21 of the Oklahoma Statutes. Except as
22 otherwise provided by law, such adjudication order
23 shall be kept confidential by the Board,

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1 b. order the child to engage in a term of community
2 service without compensation. The state or any
3 political subdivision shall not be liable if a loss or
4 claim results from any acts or omission of a child
5 ordered to engage in a term of community service
6 pursuant to the provisions of this paragraph,

7 c. order the child, the parent or parents of the child,
8 legal guardian of the child, or both the child and the
9 parent or parents of the child or legal guardian at
10 the time of the delinquent act of the child to make
11 full or partial restitution to the victim of the
12 offense which resulted in property damage or personal
13 injury.

14 (1) The court shall notify the victim of the
15 dispositional hearing. The court may consider a
16 verified statement from the victim concerning
17 damages for injury or loss of property and actual
18 expenses of medical treatment for personal
19 injury, excluding pain and suffering. If
20 contested, a restitution hearing to determine the
21 liability of the child, the parent or parents of
22 the child, or legal guardian shall be held not
23 later than thirty (30) days after the disposition
24 hearing and may be extended by the court for good

1 cause. The parent or parents of the child or
2 legal guardian may be represented by an attorney
3 in the matter of the order for remittance of the
4 restitution by the parent or parents of the child
5 or legal guardian. The burden of proving that
6 the amount indicated on the verified statement is
7 not fair and reasonable shall be on the person
8 challenging the fairness and reasonableness of
9 the amount.

10 (2) Restitution may consist of monetary reimbursement
11 for the damage or injury in the form of a lump
12 sum or installment payments after the
13 consideration of the court of the nature of the
14 offense, the age, physical and mental condition
15 of the child, the earning capacity of the child,
16 the parent or parents of the child, or legal
17 guardian, or the ability to pay, as the case may
18 be. The payments shall be made to such official
19 designated by the court for distribution to the
20 victim. The court may also consider any other
21 hardship on the child, the parent or parents of
22 the child, or legal guardian and, if consistent
23 with the welfare of the child, require community
24 service in lieu of restitution or require both

1 community service and full or partial restitution
2 for the acts of delinquency by the child.

3 (3) A child who is required to pay restitution and
4 who is not in willful default of the payment of
5 restitution may at any time request the court to
6 modify the method of payment. If the court
7 determines that payment under the order will
8 impose a manifest hardship on the child, the
9 parent or parents of the child, or legal
10 guardian, the court may modify the method of
11 payment.

12 (4) If the restitution is not being paid as ordered,
13 the official designated by the court to collect
14 and disburse the restitution ordered shall file a
15 written report of the violation with the court.
16 The report shall include a statement of the
17 amount of the arrearage and any reasons for the
18 arrearage that are known by the official. A copy
19 of the report shall be provided to all parties
20 and the court shall promptly take any action
21 necessary to compel compliance.

22 (5) Upon the juvenile attaining eighteen (18) years
23 of age, the court shall determine whether the
24 restitution order has been satisfied. If the

1 restitution order has not been satisfied, the
2 court shall enter a judgment of restitution in
3 favor of each person entitled to restitution for
4 the unpaid balance of any restitution ordered
5 pursuant to this subparagraph. The clerk of the
6 court shall send a copy of the judgment of
7 restitution to each person who is entitled to
8 restitution. The judgment shall be a lien
9 against all property of the individual or
10 individuals ordered to pay restitution and may be
11 enforced by the victim or any other person or
12 entity named in the judgment to receive
13 restitution in the same manner as enforcing
14 monetary judgments. The restitution judgment
15 does not expire until paid in full and is deemed
16 to be a criminal penalty for the purposes of a
17 federal bankruptcy involving the child,

18 d. order the child to pay the fine which would have been
19 imposed had such child been convicted of such crime as
20 an adult. Any such fine collected pursuant to this
21 paragraph shall be deposited in a special Work
22 Restitution Fund to be established by the court to
23 allow children otherwise unable to pay restitution to
24 work in community service projects in the private or

1 public sector to earn money to compensate their
2 victims,

3 e. order the cancellation or denial of driving privileges
4 as provided by Sections 6-107.1 and 6-107.2 of Title
5 47 of the Oklahoma Statutes,

6 f. sanction detention in the residence of the child or
7 facility designated by the Office of Juvenile Affairs
8 or the juvenile bureau for such purpose for up to five
9 (5) days, order weekend detention in a place other
10 than a juvenile detention facility or shelter,
11 tracking, or house arrest with electronic monitoring,
12 and

13 g. impose consequences, including detention as provided
14 for in subparagraph f of this paragraph, for
15 postadjudicatory violations of probation;

16 8. The court may order the child to participate in the Juvenile
17 Drug Court Program;

18 9. The court may dismiss the petition or otherwise terminate
19 its jurisdiction at any time for good cause shown; and

20 10. In any dispositional order removing a child from the home
21 of the child, the court shall, in addition to the findings required
22 by Section 2-2-105 of this title, make a determination that, in
23 accordance with the best interests of the child and the protection
24 of the public, reasonable efforts have been made to provide for the

1 return of the child to the home of the child, or that efforts to
2 reunite the family are not required as provided in Section 2-2-105
3 of this title, and reasonable efforts are being made to finalize an
4 alternate permanent placement for the child.

5 B. Prior to adjudication or as directed by a law enforcement
6 subpoena or court order, a school district may disclose educational
7 records to the court or juvenile justice system for purposes of
8 determining the ability of the juvenile justice system to
9 effectively serve a child. Any disclosure of educational records
10 shall be in accordance with the requirements of the Family
11 Educational Rights and Privacy Act of 1974 (FERPA). If the parent,
12 guardian, or custodian of a child adjudicated a delinquent child
13 asserts that the child has approval not to attend school pursuant to
14 Section 10-105 of Title 70 of the Oklahoma Statutes, the court or
15 the Office of Juvenile Affairs may require the parent to provide a
16 copy of the written, joint agreement to that effect between the
17 school administrator of the school district where the child attends
18 school and the parent, guardian, or custodian of the child.

19 C. With respect to a child adjudicated a delinquent child for a
20 violent offense, within thirty (30) days of the date of the
21 adjudication either the juvenile bureau in counties which have a
22 juvenile bureau or the Office of Juvenile Affairs in all other
23 counties shall notify the superintendent of the school district in
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1 which the child is enrolled or intends to enroll of the delinquency
2 adjudication and the offense for which the child was adjudicated.

3 D. No child who has been adjudicated in need of supervision may
4 be placed in a secure facility.

5 E. No child charged in a state or municipal court with a
6 violation of state or municipal traffic laws or ordinances, or
7 convicted therefor, may be incarcerated in jail for the violation
8 unless the charge for which the arrest was made would constitute a
9 felony if the child were an adult. Nothing contained in this
10 subsection shall prohibit the detention of a juvenile for traffic-
11 related offenses prior to the filing of a petition in the district
12 court alleging delinquency as a result of the acts and nothing
13 contained in this section shall prohibit detaining a juvenile
14 pursuant to Section 2-2-102 of this title.

15 F. The court may revoke or modify a disposition order and may
16 order redispotion. The child whose disposition is being
17 considered for revocation or modification at said hearing shall be
18 afforded the following rights:

19 1. Notice by the filing of a motion for redispotion by the
20 district attorney. The motion shall be served on the child and the
21 parent or legal guardian of the child at least five (5) business
22 days prior to the hearing;

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1 2. The proceedings shall be heard without a jury and shall
2 require establishment of the facts alleged by a preponderance of the
3 evidence;

4 3. During the proceeding, the child shall have the right to be
5 represented by counsel, to present evidence, and to confront any
6 witness testifying against the child;

7 4. Any modification, revocation or redispotion removing the
8 child from the physical custody of a parent or guardian shall be
9 subject to review on appeal, as in other appeals of delinquent
10 cases;

11 5. If the child is placed in secure detention, bail may be
12 allowed pending appeal; and

13 6. The court shall not enter an order removing the child from
14 the custody of a parent or legal guardian pursuant to this section
15 unless the court first finds that reasonable efforts have been made
16 to maintain the family unit and prevent the unnecessary removal of
17 the child from the home of the child or that an emergency exists
18 which threatens the safety of the child and that:

- 19 a. such removal is necessary to protect the public,
20 b. the child is likely to sustain harm if not immediately
21 removed from the home,
22 c. allowing the child to remain in the home is contrary
23 to the welfare of the child, or
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1 d. immediate placement of the child is in the best
2 interests of the child.

3 The court shall state in the record that such considerations
4 have been made. Nothing in this section shall be interpreted to
5 limit the authority or discretion of the agency providing probation
6 supervision services to modify the terms of probation including, but
7 not limited to, curfews, imposing community service, or any
8 nondetention consequences.

9 G. A willful violation of any provision of an order of the
10 court issued under the provisions of the Oklahoma Juvenile Code
11 shall constitute indirect contempt of court and shall be punishable
12 by a fine not to exceed Three Hundred Dollars (\$300.00) or, as to a
13 delinquent child, placement in a juvenile detention center for not
14 more than ten (10) days, or by both such fine and detention.

15 SECTION 3. AMENDATORY 19 O.S. 2021, Section 138.5, is
16 amended to read as follows:

17 Section 138.5 A. It shall be the duty of the office of the
18 county indigent defender to represent as counsel anyone who appears
19 for arraignment without aid of counsel, and who has been informed by
20 the judge that it is his right to have counsel, and who desires
21 counsel, but is unable to employ such aid; and upon order of a
22 district judge of such county he shall investigate any matter
23 pending before the judge and report to him in the manner prescribed
24 by the judge.

1 B. When a defendant or, if applicable, his parent or legal
2 guardian requests representation by the county indigent defender,
3 such person shall submit an appropriate application, the form of
4 which shall state that such application is signed under oath and
5 under the penalty of perjury and that a false statement may be
6 prosecuted as such. The application shall state whether or not the
7 defendant has been released on bond. In addition, if the defendant
8 has been released on bond, the application shall include a written
9 statement from the applicant that he or she has contacted three (3)
10 attorneys, licensed to practice law in this state, and the applicant
11 has been unable to obtain legal counsel. ~~A nonrefundable~~
12 ~~application fee of Fifteen Dollars (\$15.00) shall be paid to the~~
13 ~~court clerk at the time the application is submitted, and no~~
14 ~~application shall be accepted without payment of the fee; except~~
15 ~~that the court may, based upon the financial information submitted,~~
16 ~~waive the fee, if the person is in custody or if the court~~
17 ~~determines that the person does not have the financial resources to~~
18 ~~pay the fee. Any fee collected pursuant to this subsection shall be~~
19 ~~retained by the court clerk as an administrative fee and deposited~~
20 ~~in the court fund.~~ Before the court appoints the county indigent
21 defender based on the application, the court shall advise the
22 defendant or, if applicable, his or her parent or legal guardian
23 that the application is signed under oath and under the penalty of
24 perjury. A copy of the application shall be sent to the prosecuting

1 attorney or the Office of the Attorney General, whichever is
2 appropriate, for review, and, upon request, the court shall hold a
3 hearing on the issue of the eligibility for appointment of the
4 county indigent defender.

5 C. If the defendant is admitted to bail and the defendant or
6 another person on behalf of the defendant posts a bond, other than
7 by personal recognizance, the court may consider such fact in
8 determining the eligibility of the defendant for appointment of the
9 county indigent defender; provided, however, such consideration
10 shall not be the sole factor in the determination of eligibility.

11 SECTION 4. REPEALER 10A O.S. 2021, Section 2-2-509, is
12 hereby repealed.

13 SECTION 5. This act shall become effective July 1, 2022.

14 SECTION 6. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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19 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
20 dated 03/03/2022 - DO PASS, As Amended and Coauthored.

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