

An Act

ENROLLED SENATE
BILL NO. 1282

By: Haste of the Senate

and

Lawson and Hill of the
House

An Act relating to the Oklahoma Juvenile Code; amending 10A O.S. 2021, Section 2-3-101, which relates to detention of a child; requiring Office of Juvenile Affairs approval of certain screening tool; conforming language; and providing an effective date.

SUBJECT: Requiring the Office of Juvenile Affairs to utilize a risk-assessment screening tool

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

SECTION 1. AMENDATORY 10A O.S. 2021, 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, a risk-assessment screening tool approved by the Office of Juvenile Affairs (OJA) shall be utilized, and 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 child twelve (12) years of age or younger shall be placed in a juvenile detention facility unless all alternatives have been exhausted and the child is currently charged with a criminal offense that would constitute a felony if committed by an adult and it has been indicated by ~~a~~ an OJA-approved risk-assessment screening that the child requires

detention. The detention of any child twelve (12) years of age or younger shall be judicially reviewed pursuant to subparagraph c of this paragraph.

- b. Any child who is thirteen (13) or fourteen (14) years of age may be admitted to a juvenile detention facility only after all alternatives have been exhausted and the child is currently charged with a criminal offense that would constitute a felony if committed by an adult and it has been indicated by ~~a~~ an OJA-approved risk-assessment screening that the child requires detention.
- c. No preadjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days. If the child is being detained for the commission of a murder, the court may, if it is in the best interests of justice, extend the effective period of such an order an additional sixty (60) days.
- d. Whenever the court orders a child to be held in a juvenile detention facility, an order for secure detention shall remain in force and effect for not more than fifteen (15) days after such order. Upon an application of the district attorney and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed fifteen (15) days after such hearing. The total period of preadjudicatory or predisposition shall not exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph,

"telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

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

3. Except as otherwise authorized by this section, a child who has been taken into custody as a deprived child, a child in need of supervision, or who appears to be a minor in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care or, with regard to a child who appears to be a minor in need of treatment, a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, or released to the custody of the parents of the child or some other responsible party. Provided, this shall not preclude runaway juveniles from other states, with or without delinquent status, to be held in a detention facility in accordance with the Interstate Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this title and rules promulgated by the Interstate Commission.

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

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

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

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

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

- a. is on probation or parole on a prior delinquent offense,
- b. is on preadjudicatory community supervision, or
- c. is currently on release status on a prior delinquent offense;

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

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

- a. the child is absent from court-ordered placement without approval by the court,
- b. the child is absent from designated placement by the Office of Juvenile Affairs without approval by the Office of Juvenile Affairs,
- c. there is reason to believe the child will not remain at said placement, or
- d. the child is subject to an administrative transfer or parole revocation proceeding.

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

D. Priority shall be given to the use of juvenile detention facilities for the detention of juvenile offenders through provisions requiring the removal from detention of a juvenile with a lower priority status if an empty detention bed is not available at

the time of referral of a juvenile with a higher priority status and if the juvenile with a higher priority status would be more of a danger to the public than the juvenile with the lower priority status.

E. Juvenile detention facilities shall be the initial placement for all persons under eighteen (18) years of age. No child shall be placed in secure detention in an adult jail, adult lockup, adult detention facility or other adult facility except as provided in this section.

1. Any child who is at least fifteen (15) years of age who is charged with murder in the first degree may be detained in an adult jail, adult lockup, adult detention facility or other adult facility only after a hearing in which the child is provided representation and the court makes a written finding that it is in the interest of justice that the child be placed in an adult jail, adult lockup, adult detention facility or other adult facility.

2. In determining whether it is in the interest of justice that a child who is at least fifteen (15) years of age and who is charged with murder in the first degree be placed in an adult jail, adult lockup, adult detention facility or other adult facility, the court shall consider:

- a. the age of the child,
- b. the physical and mental maturity of the child,
- c. the present mental state of the child, including whether the child presents an imminent risk of harm to the child,
- d. the nature and circumstances of the alleged offense,
- e. the child's history of prior delinquent acts,
- f. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other detained youth, and

g. any other relevant factors.

3. If a court determines that it is in the interest of justice that the child be placed in an adult jail, adult lockup, adult detention facility or other adult facility:

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

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

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

2. Adult jails, adult lockups, adult detention facilities or other adult facilities shall process requests for visits and allow approved visitors contact visits with the child within five (5) business days of the request.

G. 1. Except as otherwise provided in this section, no child shall be placed in secure detention in an adult jail, adult lockup, adult detention facility or other adult facility unless:

- a. the adult jail, adult lockup or adult detention facility provides sight and sound separation for juveniles, pursuant to standards required by subsection E of Section 2-3-103 of this title, and
- b. the adult jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Office of Juvenile Affairs, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:
 - (1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities,
 - (2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities, and
 - (3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling.

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

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile secure facility or from an Office of Juvenile Affairs group

home from being held in any jail certified by the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

- a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.
- b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

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

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

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

- a. there is a reasonable belief that the person is eighteen (18) years of age or older,
- b. there is a reasonable belief that a felony has been committed by the person,
- c. a court order for such detention is obtained from a judge of the district court within six (6) hours of initially detaining the person,
- d. there is no juvenile detention facility that has space available for the person and that is within thirty (30) miles of the jail, police station, or law enforcement office in which the person is to be detained, and
- e. during the time of detention the person is detained in a facility meeting the requirements of subparagraph b of paragraph 1 of this subsection.

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

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

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

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

Code. The Indian tribe may contract with any juvenile detention facility for the providing of detention services.

J. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by the Office of Juvenile Affairs.

K. Whenever a juvenile is placed in any adult jail, adult lockup, adult detention facility or other adult facility, the Office of Juvenile Affairs shall have access to all facilities which detain such juveniles and shall have access to any data regarding such juveniles. The Office of Juvenile Affairs shall have access to all adult jails, adult lockups, adult detention facilities or other adult facilities in this state, including all data maintained by such facilities, to assure compliance with this section. The Board of Juvenile Affairs shall promulgate rules as necessary to implement the provisions of this section.

SECTION 2. This act shall become effective November 1, 2022.

Passed the Senate the 14th day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____