

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3205

By: Talley

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8 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

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

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

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

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

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

21 F. The guardian ad litem shall not be a district attorney, an
22 employee of the office of the district attorney, an employee of the
23 court, an employee of a juvenile bureau, or an employee of any
24 public agency having duties or responsibilities towards the child.

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

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

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

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

23 2. If it is consistent with the welfare of the child, the child
24 shall be placed with the parent or legal guardian of the child, but

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

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

1 accordance with the Individuals with Disabilities
2 Education Act (IDEA). The results of such tests shall
3 be made available to the court for use by the court in
4 determining the disposition of the case.

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

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

19 d. No child who has been adjudicated in need of
20 supervision only upon the basis of truancy or
21 noncompliance with the mandatory school attendance law
22 shall be placed in a public or private institutional
23 facility or be removed from the custody of the lawful
24 parent, guardian or custodian of the child.

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

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

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

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

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

9 7. With respect to a child adjudicated a delinquent child, the
10 court may:

- 11 a. for acts involving criminally injurious conduct as
12 defined in Section 142.3 of Title 21 of the Oklahoma
13 Statutes, order the child to pay a victim compensation
14 assessment in an amount not to exceed that amount
15 specified in Section 142.18 of Title 21 of the
16 Oklahoma Statutes. The court shall forward a copy of
17 the adjudication order to the Crime Victims
18 Compensation Board for purposes of Section 142.11 of
19 Title 21 of the Oklahoma Statutes. Except as
20 otherwise provided by law, such adjudication order
21 shall be kept confidential by the Board,
- 22 b. order the child to engage in a term of community
23 service without compensation. The state or any
24 political subdivision shall not be liable if a loss or

1 claim results from any acts or omission of a child
2 ordered to engage in a term of community service
3 pursuant to the provisions of this paragraph,

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

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

1 restitution by the parent or parents of the child
2 or legal guardian. The burden of proving that
3 the amount indicated on the verified statement is
4 not fair and reasonable shall be on the person
5 challenging the fairness and reasonableness of
6 the amount.

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

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

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

20 (5) Upon the juvenile attaining eighteen (18) years
21 of age, the court shall determine whether the
22 restitution order has been satisfied. If the
23 restitution order has not been satisfied, the
24 court shall enter a judgment of restitution in

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

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

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

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

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

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

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

18 10. In any dispositional order removing a child from the home
19 of the child, the court shall, in addition to the findings required
20 by Section 2-2-105 of this title, make a determination that, in
21 accordance with the best interests of the child and the protection
22 of the public, reasonable efforts have been made to provide for the
23 return of the child to the home of the child, or that efforts to
24 reunite the family are not required as provided in Section 2-2-105

1 of this title, and reasonable efforts are being made to finalize an
2 alternate permanent placement for the child.

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

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

24

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

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

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

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

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

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

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

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

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

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

23 The court shall state in the record that such considerations
24 have been made. Nothing in this section shall be interpreted to

1 limit the authority or discretion of the agency providing probation
2 supervision services to modify the terms of probation including, but
3 not limited to, curfews, imposing community service, or any
4 nondetention consequences.

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

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

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

21 B. When a defendant or, if applicable, his parent or legal
22 guardian requests representation by the county indigent defender,
23 such person shall submit an appropriate application, the form of
24 which shall state that such application is signed under oath and

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

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

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

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

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

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15 58-2-10978 GRS 03/03/22

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