

1 **SENATE FLOOR VERSION**

2 April 13, 2022

3 ENGROSSED HOUSE
4 BILL NO. 3205

By: Talley, Williams, Virgin,
Munson, and Ranson of the
House

5 and

6 Garvin of the Senate

7
8
9 [fees and costs - Oklahoma Juvenile Code -
10 modifying provisions related to probation fees -
effective date -

emergency]

11
12
13 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

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

16 Section 2-2-301. A. No information gained by a custodial
17 interrogation of a youthful offender under sixteen (16) years of age
18 or a child nor any evidence subsequently obtained as a result of
19 such interrogation shall be admissible into evidence against the
20 youthful offender or child unless the custodial interrogation about
21 any alleged offense by any law enforcement officer or investigative
22 agency, or employee of the court, or employee of the Office of
23 Juvenile Affairs is done in the presence of the parents, guardian,
24 attorney, adult relative, adult caretaker, or legal custodian of the

1 youthful offender or child. No such custodial interrogation shall
2 commence until the youthful offender or child and the parents,
3 guardian, attorney, adult relative, adult caretaker, or legal
4 custodian of the youthful offender or child have been fully advised
5 of the constitutional and legal rights of the youthful offender or
6 child, including the right to be represented by counsel at every
7 stage of the proceedings, and the right to have counsel appointed by
8 the court if the parties are without sufficient financial means;
9 provided, however, that no legal aid or other public or charitable
10 legal service shall make claim for compensation as contemplated
11 herein. It is further provided that where private counsel is
12 appointed in such cases, the court shall set reasonable compensation
13 and order the payment out of the court fund. As used in this
14 section, "custodial interrogation" means questioning of a youthful
15 offender under sixteen (16) years of age or child while that
16 youthful offender or child is in law enforcement custody or while
17 that youthful offender or child is being deprived of freedom of
18 action in any significant way by a law enforcement officer, employee
19 of the court, or employee of the Office. Custodial interrogation
20 shall conform with all requirements for interrogation of adult
21 criminal offenders. The term "custodial interrogation" shall not be
22 deemed to mean questioning of a youthful offender or child by a
23 public school administrator or teacher, so long as such questioning
24 is not being conducted on behalf of a law enforcement officer, an

1 employee of the court or an employee of the Office. Any information
2 gained from noncustodial questioning of a child or youthful offender
3 by a public school administrator or teacher concerning a wrongful
4 act committed on public school property shall be admissible into
5 evidence against the youthful offender or child.

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

9 C. If the youthful offender or child is not otherwise
10 represented by counsel, whenever a petition is filed pursuant to the
11 provisions of Section 2-2-104 or Section 2-5-201 et seq. of this
12 title, the court shall appoint an attorney, who shall not be a
13 district attorney, for the youthful offender or child regardless of
14 any attempted waiver by the parent or other legal custodian of the
15 youthful offender or child of the right of the youthful offender or
16 child to be represented by counsel. The youthful offender or child
17 shall be represented by counsel at every hearing or review through
18 completion or dismissal of the case. Counsel shall be appointed by
19 the court only upon determination by the court that the parent,
20 legal guardian or legal custodian is found to be indigent. If
21 indigency is established, the Oklahoma Indigent Defense System shall
22 represent the child in accordance with Section 1355.6 of Title 22 of
23 the Oklahoma Statutes or the applicable office of the county
24 indigent defender shall represent the child in accordance with

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

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

1 counties where the office of the county indigent defender is
2 appointed, the court shall, if counsel is appointed and assigned,
3 allow and direct to be paid from the local court fund a reasonable
4 and just compensation to the attorney or attorneys for such services
5 as they may render; provided, that any attorney appointed pursuant
6 to this subsection shall not be paid a sum in excess of One Hundred
7 Dollars (\$100.00) for services rendered in preliminary proceedings,
8 Five Hundred Dollars (\$500.00) for services rendered during trial,
9 and One Hundred Dollars (\$100.00) for services rendered at each
10 subsequent post-disposition hearing.

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

17 F. The guardian ad litem shall not be a district attorney, an
18 employee of the office of the district attorney, an employee of the
19 court, an employee of a juvenile bureau, or an employee of any
20 public agency having duties or responsibilities towards the child.
21 The guardian ad litem shall be given access to the court file and
22 access to all records and reports relevant to the case and to any
23 records and reports of examination of the child's parent or other
24 custodian, made pursuant to this section or Section 1-2-101 of this

1 title. Provided, nothing in this subsection shall obligate counsel
2 for the child to breach attorney-client confidentiality with the
3 child.

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

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

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

19 2. If it is consistent with the welfare of the child, the child
20 shall be placed with the parent or legal guardian of the child, but
21 if it appears to the court that the conduct of such parent,
22 guardian, legal guardian, stepparent or other adult person living in
23 the home has contributed to the child becoming delinquent or in need
24 of supervision, the court may issue a written order specifying

1 conduct to be followed by such parent, guardian, legal custodian,
2 stepparent or other adult person living in the home with respect to
3 such child. The conduct specified shall be such as would reasonably
4 prevent the child from continuing to be delinquent or in need of
5 supervision.

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

- 1 b. In issuing orders to a parent, guardian, legal
2 guardian, stepparent or other adult person living in
3 the home of a child adjudicated to be a delinquent
4 child or in making other disposition of said
5 delinquent child, the court may consider the testimony
6 of said parent, guardian, legal guardian, stepparent
7 or other adult person concerning the behavior of the
8 juvenile and the ability of such person to exercise
9 parental control over the behavior of the juvenile.
- 10 c. In any dispositional order involving a child age
11 sixteen (16) or older, the court shall make a
12 determination, where appropriate, of the services
13 needed to assist the child to make the transition to
14 independent living.
- 15 d. No child who has been adjudicated in need of
16 supervision only upon the basis of truancy or
17 noncompliance with the mandatory school attendance law
18 shall be placed in a public or private institutional
19 facility or be removed from the custody of the lawful
20 parent, guardian or custodian of the child.
- 21 e. Nothing in the Oklahoma Juvenile Code or the Oklahoma
22 Children's Code may be construed to prevent a child
23 from being adjudicated both deprived and delinquent if
24 there exists a factual basis for such a finding;

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

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

16 5. The court may commit the child to the custody of the Office
17 of Juvenile Affairs. Any order adjudicating the child to be
18 delinquent and committing the child to the Office of Juvenile
19 Affairs shall be for an indeterminate period of time;

20 6. If the child has been placed outside the home, and it
21 appears to the court that the parent, guardian, legal custodian, or
22 stepparent, or other adult person living in the home has contributed
23 to the child becoming delinquent or in need of supervision, the
24 court may order that the parent, guardian, legal custodian,

1 stepparent, or other adult living in the home be made subject to any
2 treatment or placement plan prescribed by the Office or other person
3 or agency receiving custody of the child;

4 7. With respect to a child adjudicated a delinquent child, the
5 court may:

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

17 b. order the child to engage in a term of community
18 service without compensation. The state or any
19 political subdivision shall not be liable if a loss or
20 claim results from any acts or omission of a child
21 ordered to engage in a term of community service
22 pursuant to the provisions of this paragraph,

23 c. order the child, the parent or parents of the child,
24 legal guardian of the child, or both the child and the

1 parent or parents of the child or legal guardian at
2 the time of the delinquent act of the child to make
3 full or partial restitution to the victim of the
4 offense which resulted in property damage or personal
5 injury.

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

1 challenging the fairness and reasonableness of
2 the amount.

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

20 (3) A child who is required to pay restitution and
21 who is not in willful default of the payment of
22 restitution may at any time request the court to
23 modify the method of payment. If the court
24 determines that payment under the order will

1 impose a manifest hardship on the child, the
2 parent or parents of the child, or legal
3 guardian, the court may modify the method of
4 payment.

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

15 (5) Upon the juvenile attaining eighteen (18) years
16 of age, the court shall determine whether the
17 restitution order has been satisfied. If the
18 restitution order has not been satisfied, the
19 court shall enter a judgment of restitution in
20 favor of each person entitled to restitution for
21 the unpaid balance of any restitution ordered
22 pursuant to this subparagraph. The clerk of the
23 court shall send a copy of the judgment of
24 restitution to each person who is entitled to

1 restitution. The judgment shall be a lien
2 against all property of the individual or
3 individuals ordered to pay restitution and may be
4 enforced by the victim or any other person or
5 entity named in the judgment to receive
6 restitution in the same manner as enforcing
7 monetary judgments. The restitution judgment
8 does not expire until paid in full and is deemed
9 to be a criminal penalty for the purposes of a
10 federal bankruptcy involving the child,

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

20 e. order the cancellation or denial of driving privileges
21 as provided by Sections 6-107.1 and 6-107.2 of Title
22 47 of the Oklahoma Statutes,

23 f. sanction detention in the residence of the child or
24 facility designated by the Office of Juvenile Affairs

1 or the juvenile bureau for such purpose for up to five
2 (5) days, order weekend detention in a place other
3 than a juvenile detention facility or shelter,
4 tracking, or house arrest with electronic monitoring,
5 and

6 g. impose consequences, including detention as provided
7 for in subparagraph f of this paragraph, for
8 postadjudicatory violations of probation;

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

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

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

22 B. Prior to adjudication or as directed by a law enforcement
23 subpoena or court order, a school district may disclose educational
24 records to the court or juvenile justice system for purposes of

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

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

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

21 E. No child charged in a state or municipal court with a
22 violation of state or municipal traffic laws or ordinances, or
23 convicted therefor, may be incarcerated in jail for the violation
24 unless the charge for which the arrest was made would constitute a

1 felony if the child were an adult. Nothing contained in this
2 subsection shall prohibit the detention of a juvenile for traffic-
3 related offenses prior to the filing of a petition in the district
4 court alleging delinquency as a result of the acts and nothing
5 contained in this section shall prohibit detaining a juvenile
6 pursuant to Section 2-2-102 of this title.

7 F. The court may revoke or modify a disposition order and may
8 order redispotion. The child whose disposition is being
9 considered for revocation or modification at said hearing shall be
10 afforded the following rights:

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

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

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

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

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

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

- 9 a. such removal is necessary to protect the public,
- 10 b. the child is likely to sustain harm if not immediately
11 removed from the home,
- 12 c. allowing the child to remain in the home is contrary
13 to the welfare of the child, or
- 14 d. immediate placement of the child is in the best
15 interests of the child.

16 The court shall state in the record that such considerations
17 have been made. Nothing in this section shall be interpreted to
18 limit the authority or discretion of the agency providing probation
19 supervision services to modify the terms of probation including, but
20 not limited to, curfews, imposing community service, or any
21 nondetention consequences.

22 G. A willful violation of any provision of an order of the
23 court issued under the provisions of the Oklahoma Juvenile Code
24 shall constitute indirect contempt of court and shall be punishable

1 by a fine not to exceed Three Hundred Dollars (\$300.00) or, as to a
2 delinquent child, placement in a juvenile detention center for not
3 more than ten (10) days, or by both such fine and detention.

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

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

14 B. When a defendant or, if applicable, his parent or legal
15 guardian requests representation by the county indigent defender,
16 such person shall submit an appropriate application, the form of
17 which shall state that such application is signed under oath and
18 under the penalty of perjury and that a false statement may be
19 prosecuted as such. The application shall state whether or not the
20 defendant has been released on bond. In addition, if the defendant
21 has been released on bond, the application shall include a written
22 statement from the applicant that he or she has contacted three (3)
23 attorneys, licensed to practice law in this state, and the applicant
24 has been unable to obtain legal counsel. ~~A nonrefundable~~

1 ~~application fee of Fifteen Dollars (\$15.00) shall be paid to the~~
2 ~~court clerk at the time the application is submitted, and no~~
3 ~~application shall be accepted without payment of the fee; except~~
4 ~~that the court may, based upon the financial information submitted,~~
5 ~~waive the fee, if the person is in custody or if the court~~
6 ~~determines that the person does not have the financial resources to~~
7 ~~pay the fee. Any fee collected pursuant to this subsection shall be~~
8 ~~retained by the court clerk as an administrative fee and deposited~~
9 ~~in the court fund.~~ Before the court appoints the county indigent
10 defender based on the application, the court shall advise the
11 defendant or, if applicable, his or her parent or legal guardian
12 that the application is signed under oath and under the penalty of
13 perjury. A copy of the application shall be sent to the prosecuting
14 attorney or the Office of the Attorney General, whichever is
15 appropriate, for review, and, upon request, the court shall hold a
16 hearing on the issue of the eligibility for appointment of the
17 county indigent defender.

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

24

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
9 April 13, 2022 - DO PASS

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