

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2493

BY: COZORT

AS INTRODUCED

AN ACT RELATING TO CHILDREN; AMENDING 10 O.S. 1991, SECTIONS 1111, 1116, 1138 AND 1404, WHICH RELATE TO DEPENDENT AND DELINQUENT CHILDREN; PROVIDING THAT CERTAIN HEARINGS SHALL BE PUBLIC HEARINGS; PROVIDING FOR CERTAIN JUDICIAL DETERMINATIONS AND ORDERS; AUTHORIZING THE COURTS TO REQUIRE THE PLACEMENT OF DELINQUENT JUVENILES IN CERTAIN INSTITUTIONS OR FACILITIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1111, is amended to read as follows:

Section 1111. A. All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time.

1. Except as provided by paragraph 2 of this subsection, the hearings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by law.

2. Hearings related to ~~the second or subsequent~~ any delinquency adjudication of a child shall be public proceedings. ~~The adjudications relied upon to determine whether a hearing is a public proceeding pursuant to this paragraph shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location.~~ Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order specific testimony or evidence to be heard in private. For the purposes of this paragraph, "good cause" shall mean a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing.

B. The child may remain silent as a matter of right in delinquency hearings, in need of supervision hearings and in need of treatment hearings, and before he is interrogated, he shall be so advised. A child who is determined to be competent to testify shall not refuse to be a witness in a hearing to determine whether or not said child is deprived, unless the privilege against self-incrimination is invoked. The testimony of said child may be given as provided by Section 1147 or 1148 of this title or as otherwise authorized by law for the protection of child witnesses.

C. A decision determining a child to come within the purview of this chapter must be based on sworn testimony and the child must have the opportunity for cross-examination unless the facts are stipulated. Where a child is alleged to be delinquent and the facts are stipulated, the judge must ascertain from the child if he agrees with the stipulation and if he understands the consequences of stipulating the facts.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1116, is amended to read as follows:

Section 1116. A. The following kinds of orders of disposition may be made in respect to wards of the court:

1. The court may place the child on probation or under supervision in his own home, or in the custody of a suitable person elsewhere, upon such conditions as the court shall determine. The court may require the parent or other person to give security by bond, with surety or sureties approved by the court, for compliance with such order.

If it is consistent with the welfare of the child, the child shall be placed with his parent or legal guardian, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to such delinquency, or need of supervision or treatment, or deprivation, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from becoming delinquent, in need of supervision or treatment, or deprived, as defined by Section 1101 of this title. Such order shall remain in effect for a period of not more than one (1) year to be specified by the court, and the order may be extended or renewed by the court.

- a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived or in need of supervision due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the local school district, the county, the Department or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, mental retardation, and hearing and visual impairments and

other impediments which could constitute an educational handicap. The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

- b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and his ability to exercise parental control over the behavior of the juvenile.
- c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from foster care to independent living.

No child who has been adjudicated in need of supervision or deprived upon the basis of truancy or noncompliance with the mandatory school attendance law alone may be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child. A deprived adjudication based upon repeated absence from school shall not constitute a ground for termination of parental rights.

2. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is licensed by the Department or any other state department supervising or licensing private institutions and agencies; or, if such institution

or agency is in another state, by the analogous department of that state. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require.

3. The court may order the child to receive counseling or other community-based services as necessary.

4. The court may commit the child to the custody of the Department and if the child has been adjudicated to be delinquent, also may order that the child be placed in an institution or facility maintained by the state for delinquent children; provided, any order adjudicating a child to be delinquent and committing the child to the Department shall be for an indeterminate period of time.

5. Whenever, after a hearing on a petition alleging a child to be a child in need of treatment, the court determines by clear and convincing evidence that the child is a child in need of treatment, the court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child until such time as such care and treatment is no longer necessary.

a. The court shall not find a child adjudicated to be a child in need of treatment to be eligible for inpatient mental health services unless the court finds by clear and convincing evidence, after a thorough consideration of less restrictive alternatives to inpatient treatment:

(1) that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such

alternatives have failed to meet the treatment needs of the child, or

(2) that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child;

b. Whenever the court finds that a child adjudicated to be a child in need of treatment is eligible for inpatient mental health treatment:

(1) when the child is in the custody of his parent, legal guardian or legal custodian other than the Department of Human Services, the court may authorize such parent, legal guardian or legal custodian to make arrangements for the admission of the child to a public or private mental health facility appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment and may order the Department of Human Services to assist the parent or legal guardian in making said arrangements; or

(2) when the child is in the custody of the Department of Human Services, the court may authorize the Department to place the child in a mental health facility appropriate for the inpatient treatment needs of the child.

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the delinquency, need of supervision or treatment, or deprivation of the child, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

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

- a. for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, order the child to pay a victim compensation assessment in an amount not to exceed that amount specified in Section 142.18 of Title 21 of the Oklahoma Statutes. The court shall forward a copy of the adjudication order to the Crime Victims Compensation Board for purposes of Section 142.11 of Title 21 of the Oklahoma Statutes. Except as otherwise provided by law, such adjudication order shall be kept confidential by the Board,
- b. order the child to engage in a term of community service without compensation. The state or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph,
- c. if it is consistent with the welfare of the child, require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by Sections 227 and 228 of Title 57 of the Oklahoma Statutes shall apply to community services directed pursuant to this section,
- d. order the cancellation or denial of driving privileges as provided by Sections 6-107.1 and 6-107.2 of Title 47 of the Oklahoma Statutes,
- e. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program,

make the following orders: sanction detention in the residence of the child or facility designated by the Department of Human Services or the juvenile bureau for such purpose for up to five (5) days; weekend detention in a place other than a juvenile detention facility or shelter; tracking; or house arrest with electronic monitoring. On and after the adoption of guidelines by the Oklahoma Supreme Court for the Implementation of the Serious and Habitual Juvenile Offender Program, the provisions of subparagraphs a through d of this paragraph shall be subject to said guidelines,

f. in accordance with the guidelines approved and adopted by the Oklahoma Supreme Court for the implementation of the Serious and Habitual Juvenile Offender Program, impose sanctions for the violation of pre-adjudicatory or postadjudicatory violations of probation.

8. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

9. In any dispositional order removing a child from the home of the child, the court shall make a determination that, in accordance with the best interests of the child, reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

B. Whenever the court finds a child adjudicated to be a child in need of treatment eligible for inpatient mental health treatment pursuant to the provisions of this section and the child is subsequently placed in a hospital or mental health facility for said inpatient treatment, the court shall review the case at least every

sixty (60) days or more frequently as directed by the court until the child is discharged from inpatient treatment.

C. The court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the court terminates the rights of a parent and commits the child to an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the court commits the child to the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning said child, invest the Department with authority to consent to the adoption of the child, and the jurisdiction of the committing court shall terminate.

D. No child who has been adjudicated in need of supervision or deprived may be placed in a state training school.

E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for any said violation unless the charge for which the arrest was made would constitute a felony if the child were an adult; provided, that nothing contained in the above section prohibits the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the district court alleging delinquency as a result of said acts.

F. The court may require any child found to be a juvenile delinquent or child in need of supervision, the parents of any child found to be a juvenile delinquent, a child in need of supervision, a deprived child or a child in need of treatment, or both the child and the parents, to reimburse the court fund, in whole or in part, for any disbursements made from the court fund in conjunction with the case, including, but not limited to, court-appointed attorney's fees, expert witness fees, sheriff's fees, witness fees, transcripts

and postage. When any parent is financially able but has willfully failed to pay court costs or to reimburse the court fund as ordered by the court ~~or has willfully failed to pay court costs and to reimburse the court fund as ordered by the court,~~ the parent may be held in contempt of court and, upon conviction, shall be punished pursuant to Section 566 of Title 21 of the Oklahoma Statutes. After a judicial determination that the child, the parent of the child, or both such child or parent, are able to pay the costs and to reimburse the court fund or pay the costs and to reimburse the court fund in the case in installments, the court may order the costs and such reimbursement of the court fund to be paid in installments and shall set the amount and due date of each installment. A parent may be found to be financially able to pay court costs or to reimburse the court fund or to pay court costs and to reimburse the court fund in installments even though the court has previously found the parent indigent.

SECTION 3. AMENDATORY 1138 O.S. 1991, Section 1138, is amended to read as follows:

Section 1138. A. It is the intent of the Legislature of this state to provide for the creation of all reasonable means and methods that can be established by a state for:

1. The prevention of delinquency;
2. The care and rehabilitation of delinquent children; and
3. The protection of the public.

It is further the intent of the Legislature that this state, through the Department of Human Services, establish, maintain and continuously refine and develop a balanced and comprehensive state program for children who are potentially delinquent or are delinquent.

B. Whenever a child who has been adjudicated by the court as a delinquent child has been committed to the Department, and the court has not ordered that the child be placed in an institution or

facility maintained by the state for delinquent children, the Department ~~may~~ shall:

1. Place the child in a state training school or other institution or facility maintained by the state for delinquent children if the child has:

- a. exhibited seriously violent, aggressive or assaultive behavior; or
- b. committed a serious felony constituting violent, aggressive and assaultive behavior; or
- c. habitually committed serious delinquent acts; or
- d. committed multiple serious delinquent acts;

to the extent that it is necessary for the protection of the public;
or

2. Place the child in a facility maintained by the state for children, or in a foster home, group home, transitional living program or community residential center; or

3. Allow the child his liberty, under supervision, in an independent living program; or

4. Allow the child his liberty, under supervision, either immediately or after a period in one of the facilities referred to in paragraphs 1 and 2 of this subsection; or

5. Place the child in a state school for mentally retarded, if the child is eligible for admission thereto; or

6. Place the child in any licensed private facility deemed by the Department to be in the best interest of the child; or

7. Place the child in a Department-operated treatment center or other mental health facility if the delinquent child has been found to be in need of treatment and to be eligible for residential care and treatment, as provided in Section 1116 of this title, by the court.

C. The Department shall place priority on the placement of delinquent youth held in secure juvenile detention facilities.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1404, is amended to read as follows:

Section 1404. A. In addition to the other powers and duties prescribed by law, the Department shall have the following duties and powers with regard to children placed in Department-operated institutions and facilities:

1. Provide for the care, education, training, treatment and rehabilitation of children who are placed in the institutions. The Department may give assistance to local school districts in providing an education to such children, may supplement such education, and may provide facilities for such purposes. It shall be the duty of the Department to assure that children in the aforesaid institutions receive educational services which will stress basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science and vocational-technical education; and

2. Transfer from a children's institution to another facility under the jurisdiction of the Department, a child who has been adjudicated delinquent, if the Department believes it advisable to do so; transfer from a facility for children in need of supervision or deprived children to another such facility, a child who has been adjudicated in need of supervision or deprived, provided that such transfer is consistent with the treatment needs of the child and will further the goal of returning the child to his own home; transfer from a children's institution to a state school for the mentally retarded, any child eligible for admission thereto, if the child appears to be in need of the care and treatment provided at such school; transfer from a facility for delinquent, in need of supervision, or deprived children to a Department-operated treatment center any child found by the court to be a child in need of treatment and eligible for commitment for residential care and treatment as provided in Section 1116 of this title. Provided, the

provisions of this paragraph shall not authorize the Department to remove a delinquent child from an institution or facility maintained by the state for delinquent children, if such placement has been ordered by the court; and

3. Release on parole a child previously adjudicated to be delinquent, subject to terms and conditions specified by the Department, whenever the Department determines that such release will not be detrimental to society and that the child is probably ready to be returned to his community and revoke said parole for violation of the specified terms or conditions of parole pursuant to the provisions of this section and the rules, regulations and procedures established by the Department for such revocation. Provided, the provisions of this paragraph shall not authorize the Department to remove a delinquent child from an institution or facility maintained by the state for delinquent children, if such placement has been ordered by the court; and

4. Release any child from a children's institution for placement in a foster home, group home, transitional living program, independent living program or other community-based facility or program subject to terms and conditions specified by the Department; and

5. Provide parole services for children released on parole from children's institutions, and aftercare services for children discharged from children's institutions or facilities. Persons designated as Juvenile Parole Officers by the Department shall have the power to serve process and to apprehend and detain juveniles and make arrests in accordance with the laws of the state.

B. The transfer of a child from a nonsecure placement to a secure placement shall be subject to an administrative transfer hearing and any revocation of parole shall be subject to a parole revocation hearing.

1. In any administrative transfer or parole revocation proceeding the following minimum standards shall apply:

- a. the child shall have the right to notice of the proposed transfer or parole revocation hearing and the alleged violation of administrative or parole rules on which the proposed transfer or parole revocation is based; and
- b. the child shall have the right to representation by an attorney; and
- c. the child shall have the right to present evidence in his own behalf; and
- d. the child shall have a right to bail, except that said right to bail shall not be construed to require that a child who is in residence in a Department-operated institution or other facility at the time of an alleged violation leading to an administrative transfer proceeding be released from such institution or facility.

2. The situs of said hearings shall be the county in which the alleged violation of administrative or parole rules occurs. The judge having juvenile docket jurisdiction in said county shall aid the administrative transfer or parole revocation process of the Department by:

- a. determining eligibility for and amount of bail; and
- b. deciding any intermediate custody or placement issue; and
- c. if legal counsel for the child has not otherwise been obtained, appointing legal counsel for the child and fixing the amount of his compensation. Said judge shall also determine if the child is eligible for free legal services. If the child is not eligible for free

legal services, the court shall order the parents or legal guardian of the child to pay for such services.

3. If the child is eligible for free legal services, the district court fund of the county where the order committing the child to the custody of the Department was issued shall pay for all legal expenses incurred on behalf of the child pursuant to the provisions of this section. If the hearing takes place in a county other than the county from which said order was issued, the court clerk of the county in which the hearing is held shall bill the district court fund of the county where said order was issued for said legal expenses.

C. The Department may participate in federal programs relating to delinquent children, children in need of supervision, deprived children, or children in need of treatment or institutions and services for such children; and apply for, receive, use and administer federal funds for such purposes.

D. Receive interest earnings on the investment by the State Treasurer of monies, to be credited to an agency special account, for the benefit of and held in trust for persons placed in the custody of the Department or in residence at institutions maintained by the Department.

SECTION 5. This act shall become effective September 1, 1992.

43-2-7958

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