

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 41

BY: HOOPER

AS INTRODUCED

AN ACT RELATING TO CHILDREN AND DAMAGES; AMENDING 10 O.S. 1981, SECTIONS 20, 1116, AS LAST AMENDED BY SECTION 7, CHAPTER 302, O.S.L. 1990, AND 1125, AS AMENDED BY SECTION 10, CHAPTER 363, O.S.L. 1989 (10 O.S. SUPP. 1990, SECTIONS 1116 AND 1125), WHICH RELATE TO PARENT OR CHILD LIABILITY, DISPOSITION ORDERS, COSTS AND RECORDS; PROVIDING EXCEPTIONS FOR LIABILITY IMMUNITY; AUTHORIZING ORDER REQUIRING PAYMENT OF CERTAIN FEE OR RESTITUTION BY PARENT OR LEGAL GUARDIAN OF DELINQUENT CHILD; ALLOWING RELEASE OF CERTAIN JUVENILE DELINQUENCY INFORMATION; PROVIDING FOR CERTAIN LIABILITY IMMUNITY; PROHIBITING RELEASE OF INFORMATION AFTER ORDER FOR EXPUNGEMENT; EXPANDING RESTITUTION PROVISIONS; PROVIDING FOR CHILD OR PARENT TO RETURN, REPAIR OR RESTORE CERTAIN PROPERTY; REQUIRING DETERMINATION OF CERTAIN EXPENSES, DAMAGES AND INJURY TO VICTIM OR PROPERTY; REQUIRING CERTAIN CREDITS; PROHIBITING CERTAIN EXCESS RESTITUTION; MAINTAINING RIGHT TO CIVIL CAUSE OF ACTION; AUTHORIZING MODIFICATION OR REVOCATION OF RESTITUTION ORDERS UPON CERTAIN CONDITIONS; PROVIDING ADDITIONAL DISPOSITIONAL ALTERNATIVE FOR DELINQUENT CHILD; DEFINING TERM; AMENDING 23 O.S.

1981, SECTION 10, AS AMENDED BY SECTION 1, CHAPTER 19, O.S.L. 1982 (23 O.S. SUPP. 1990, SECTION 10), WHICH RELATES TO RECOVERY OF DAMAGES FROM PARENTS OF MINORS; REMOVING CERTAIN DAMAGE LIMITATION; REPEALING 10 O.S. 1981, SECTION 1116, AS LAST AMENDED BY SECTION 2, CHAPTER 272, O.S.L. 1990 (10 O.S. SUPP. 1990, SECTION 1116), WHICH IS A DUPLICATE SECTION AND WHICH RELATES TO DISPOSITION ORDERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 10 O.S. 1981, Section 20, is amended to read as follows:

Section 20. Neither parent or child is answerable, as such, for the act of the other, except as specifically provided by Section 1116 of this title, Section 10 of Title 23, Section 1731.1 of Title 21 of the Oklahoma Statutes or other provisions of law.

SECTION 2. AMENDATORY 10 O.S. 1981, Section 1116, as last amended by Section 7, Chapter 302, O.S.L. 1990 (10 O.S. Supp. 1990, 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.

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.

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; 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. The court may order any child adjudicated a delinquent child for acts involving criminally injurious conduct as defined in Section 142.3 of Title 21 of the Oklahoma Statutes, the parents or legal guardian of any such child or both the parents or legal guardian and 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. ~~Such adjudication order shall be kept confidential by the Board.~~

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

B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in

foster care on a long-term basis as a permanent plan or with a goal of independent living.

C. 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.

D. 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.

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

F. 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.

G. If it is consistent with the welfare of the child, the court may 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.

1. For purposes of restitution, the court may:

- a. order a child adjudicated a delinquent child, the parents or legal guardian of such delinquent child, or both the parents or legal guardian and the child to make restitution to the victim according to a schedule of payments established by the court and may further order interest to be paid upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the court believes the child, his parents or legal guardian, or both the child and the parents or legal guardian are able to pay such restitution without imposing manifest hardship on the child or the immediate family,
- b. order the property to be restored in kind to the owner or the person entitled to possession thereof,
- c. order the child, his parents or legal guardian, or both the child and the parents or legal guardian to repair and restore property damaged, and
- d. order the payment of out-of-pocket expenses, loss or damage to property and injury to the victim proximately caused by the conduct of the delinquent child.

2. The court shall allow credit for property returned in kind, for property damages ordered to be repaired by the child, his parents or legal guardian, or both the child and his parents or legal guardian, and for property ordered to be restored, and after

granting such credit, the court shall assess the actual out-of-pocket expenses, losses, damages and injuries suffered by the victim.

3. In no event shall a victim be entitled to recover restitution in excess of the actual out-of-pocket expenses, losses, damages and injuries, proximately caused by the conduct of the delinquent child and restitution shall not be ordered to be paid on account of pain or suffering, provided however, that nothing in this subsection shall abridge or preclude any victim from the civil right to recover damages by separate civil cause of action.

4. An order to make restitution may be modified or revoked by the court as follows:

- a. if the delinquent child commits another offense,
- b. if the delinquent child, his parents or legal guardian, or both the child and the parents or legal guardian fail to make restitution as ordered by the court, or
- c. if the order of restitution imposes a manifest hardship on the parents or legal guardian, the child or both.

No order to make restitution shall be modified if the court finds that the parties ordered to pay restitution had the financial ability to make restitution as ordered by the court, and willfully refused to do so.

H. If it is consistent with the welfare of the child, the court may order a child adjudicated delinquent, his parents or legal guardian, or both the child and the parents or legal guardian to participate in mediation sessions with the victim, at the victim's request, or attend a victim impact panel established by the Commission on Children and Youth for juvenile property offender.

I. 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.

J. For purposes of this section, the term "parents or legal guardian" shall mean the blood-related or legal adoptive father, mother or both father and mother, having legal custody of the child, or such other person having legal authority by court order for the care and custody of the child, provided the child is under eighteen (18) years of age, unmarried, and living in the home of such person or persons at the time of the delinquent act.

SECTION 3. AMENDATORY 10 O.S. 1981, Section 1125, as amended by Section 10, Chapter 363, O.S.L. 1989 (10 O.S. Supp. 1990, Section 1125), is amended to read as follows:

Section 1125. A. The court shall make and keep records of all cases brought before it. Such records shall be open to public inspection only by order of the court to persons having a legitimate interest therein, except that all records of proceedings in adoption cases and all papers and books relating thereto shall remain confidential as provided by law.

B. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

C. The following information concerning delinquent children shall be open to public inspection without court order:

1. The child's name;
2. The child's address;
3. The child's date of birth;
4. The nature of the delinquent act; and
5. The parents' or legal guardian's name and address.

D. No state agency, municipal authority or their respective employees shall be held liable for the release of information authorized by subsection C of this section concerning a delinquent child. Any additional information or records concerning a delinquent child shall be released only by court order, as provided by subsection A of this section.

E. Upon an order for expungement of juvenile records of delinquency, as provided by Section 1506 of this title, no state agency, municipal authority or their respective employees shall retain or provide for public inspection any information or record authorized under subsection C of this section, except as provided in Section 1506 of this title.

F. Nothing in this section shall be construed to prohibit inspection by any person who is entitled to inspect such records pursuant to any provision of Title 10 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 23 O.S. 1981, Section 10, as amended by Section 1, Chapter 19, O.S.L. 1982 (23 O.S. Supp. 1990, Section 10), is amended to read as follows:

Section 10. The state or any county, city, town, municipal corporation or school district, or any person, corporation or organization, shall be entitled to recover damages in a court of competent jurisdiction from the parents of any minor under the age of eighteen (18) years, living with the parents at the time of the act, who shall commit any criminal or delinquent act resulting in bodily injury to any person or damage to or larceny of any property, real, personal or mixed, belonging to the state or a county, city, town, municipal corporation, school district, person, corporation or organization. ~~The amount of damages awarded shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).~~

SECTION 5. REPEALER 10 O.S. 1981, Section 1116, as last amended by Section 2, Chapter 272, O.S.L. 1990 (10 O.S. Supp. 1990, Section 1116), is hereby repealed.

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

43-1-046

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