

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 1911

By: Widener

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Section 1116, as last amended by Section 2, Chapter 74, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1116), which relates to dispositional orders; providing for certain orders for certain delinquents; amending 21 O.S. 1991, Section 856, as last amended by Section 1, Chapter 212, O.S.L. 1993, Section 1, Chapter 286, O.S.L. 1992, Section 3, Chapter 309, O.S.L. 1993, 1272, as last amended by Section 1, Chapter 309, O.S.L. 1993, and 1273, as amended by Section 2, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Sections 856, 858, 1271.1, 1272 and 1273), which relate to contributing to the delinquency of a minor and weapons and firearms; adding to certain disposition orders; providing penalties for certain custodial parents and legal guardians under certain conditions; amending 47 O.S. 1991, Section 6-107.1, as amended by Section 1, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 6-107.1), which relates to driving privileges; adding to certain time periods for certain cancellations and denials of driver licenses; modifying certain notifications; adding to the violations for which driver licenses may be cancelled or denied; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1116, as last amended by Section 2, Chapter 74, O.S.L. 1993 (10 O.S. Supp. 1993, 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 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 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; 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. 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.

6. 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 child to pay the fine which would have been imposed had such child been convicted of such crime as an adult. Any such fine collected pursuant to this paragraph shall be deposited in a special Work Restitution Fund to be established by the court to allow children otherwise unable to pay restitution to work in community service projects in the private or public sector to earn money to compensate their victims,
- e. 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,
- 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, 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 e of this paragraph shall be subject to said guidelines,
- g. 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,
- h. when the child has been adjudicated delinquent for a violation of Section 858 or Section 1272 of Title 21

of the Oklahoma Statutes, order the child to complete not less than one hundred (100) hours of community service or order the cancellation or denial of driving privileges for up to one (1) year, or both. For a subsequent violation of said sections, the court may order the child to complete not less than two hundred fifty (250) hours of community service or order the cancellation or denial of driving privileges for two (2) years, or both.

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

8. 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. 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.

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

D. 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.

E. 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 2. AMENDATORY 21 O.S. 1991, Section 856, as last amended by Section 1, Chapter 212, O.S.L. 1993 (21 O.S. Supp. 1993, Section 856), is amended to read as follows:

Section 856. A. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a

delinquent child, upon conviction, shall, for the first offense, be guilty of a misdemeanor and punishable by imprisonment in a county jail not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

B. Every person convicted of a second or any succeeding violation of this act shall be guilty of a felony and punishable by imprisonment in the State Penitentiary not to exceed three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet or encourage a minor to commit or participate in committing an act that would be a felony if committed by an adult shall, upon conviction, be guilty of a felony punishable by the maximum penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted or encouraged the minor to commit or participate in committing.

D. Every person who shall knowingly or willfully cause, aid, abet, encourage, solicit or recruit a minor to participate, join, or associate with any criminal street gang, as defined by subsection F of this section, or any gang member for the purpose of committing any criminal act shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not to exceed one (1) year, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both such fine and imprisonment.

E. Every person convicted of a second or subsequent violation of subsection D of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not to exceed five (5) years or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

F. "Criminal street gang" means any ongoing organization, association, or group of five or more persons that specifically either promotes, sponsors, or assists in, or participates in, and

requires as a condition of membership or continued membership, the commission of one or more of the following criminal acts:

1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of this title;

2. Aggravated assault and battery as defined by Section 646 of this title;

3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;

4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 of this title;

5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of this title;

6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled dangerous substances, as defined in Section 2-101 et seq. of Title 63 of the Oklahoma Statutes;

7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-414 of Title 63 of the Oklahoma Statutes;

8. Arson, as defined in Sections 1401 through 1403 of this title;

9. The influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of this title;

10. Theft of any vehicle, as described in Section 1720 of this title;

11. Rape, as defined in Section 1111 of this title;

12. Extortion, as defined in Section 1481 of this title;

13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of this title;

14. Transporting a weapon in, or discharging a weapon from, a boat, in violation of Section 1289.14 of this title;

15. Possession of a concealed weapon, as defined by Section 1289.8 of this title; or

16. Shooting or discharging a firearm, as defined by Section 652 of this title.

G. Whenever a person under eighteen (18) years of age is found by a court to have violated the provisions of Section 858 or Section 1272 of this title, and the weapon or firearm was obtained by said person through a violation of Section 1273 of this title by the custodial parent or legal guardian of said person, the custodial parent or legal guardian upon conviction shall, for the first offense, be guilty of a misdemeanor punishable by not less than one hundred (100) hours of community service. A second or subsequent conviction shall be a misdemeanor punishable by not less than two hundred fifty (250) hours of community service. The court shall give preference to community service that benefits a public or private agency that provides services for delinquent youth or youth who are at risk of becoming delinquent.

SECTION 3. AMENDATORY Section 1, Chapter 286, O.S.L. 1992 (21 O.S. Supp. 1993, Section 858), is amended to read as follows:

Section 858. Any custodial parent or legal guardian of a child under eighteen (18) years of age whose child commits the crime of possession of a firearm on school property may be fined not exceeding Two Hundred Dollars (\$200.00), or ordered to perform community service not exceeding forty (40) hours or both such fine and community service. To satisfy any community service requirement, the court may give preference to work which benefits the school said child attends. Said penalty shall be an administrative penalty and shall not be recorded on the custodial parent's or guardian's criminal record. The fine shall be payable to the court clerk to be deposited in the court fund. Nothing in this section shall prohibit the filing or prosecution of any criminal charge including but not limited to the crime of contributing to the delinquency of a minor.

SECTION 4. AMENDATORY Section 3, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1271.1), is amended to read as follows:

Section 1271.1 A. Whenever a person under eighteen (18) years of age is detained or arrested by a law enforcement officer and is carrying any weapon or firearm prohibited by Section 1272

of Title 21 of the Oklahoma Statutes, every prohibited weapon and firearm may be confiscated and forfeited to the confiscating authority. Such confiscation and forfeiture shall not require that criminal charges be filed against the minor. However, when a weapon or firearm confiscated pursuant to the provisions of this section has been taken by a minor without the permission of the owner, the weapon or firearm shall be returned to the owner pursuant to Section 1321 of Title 22 of the Oklahoma Statutes, provided the possession of such weapon or firearm by an adult is not otherwise prohibited by law.

B. When the person under eighteen (18) years of age has obtained the weapon or firearm through a violation of Section 1273 of this title by any custodial parent or guardian of said person, the parent or legal guardian may, upon conviction and in addition to any other penalty authorized by law, be sentenced as provided by Section 856 of this title.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1272, as last amended by Section 1, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1272), is amended to read as follows:

Section 1272. A. It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, except as an unloaded firearm in a locked container and otherwise provided in this article. Provided further, that this section shall not prohibit the proper use of guns and knives for hunting, fishing, educational or recreational purposes, nor shall this section be construed to prohibit the carrying or any use of weapons in a manner otherwise permitted by statute. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor punishable as provided in Section 1276 of this title.

B. When a person eighteen (18) years of age or under is found by a court to have violated the provisions of this section and the weapon or firearm was obtained by said person through a violation of Section 1273 of this title by the custodial parent or legal guardian of said person, the parent or legal guardian may, upon conviction and in addition to any other penalty authorized by law, be sentenced as provided by Section 856 of this title.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1273, as amended by Section 2, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1273), is amended to read as follows:

Section 1273. A. It shall be unlawful for any person within this state, to sell or give to any minor any of the arms or weapons designated in Section 1272 of this title; provided, the provisions of this section shall not prohibit a parent from giving his or her minor child a rifle or shotgun for participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting events. ~~Any~~ Except as provided by subsection B of this section, any person violating this section shall, upon conviction, be punishable as provided in Section 1276 of this title.

B. When a minor has obtained a weapon or firearm through a violation of this section by a custodial parent or legal guardian, the parent or legal guardian may, upon conviction and in addition to any other penalty authorized by law, be sentenced as provided by Section 856 of this title.

SECTION 7. AMENDATORY 47 O.S. 1991, Section 6-107.1, as amended by Section 1, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 6-107.1), is amended to read as follows:

Section 6-107.1 A. When any district court, municipal court of record or any municipal court in a city or town in which the judge is an attorney licensed to practice law in this state has determined that a person under the age of eighteen (18) years has committed any offense described in this section, the court shall notify the Department of Public Safety, on a Notification form prescribed by the Department as provided in Section 6-107.2 of this title.

B. The Notification shall include the name, date of birth, physical description and, if known, the driver license number of the person. The Notification shall contain a recommendation to the Department to cancel or deny driving privileges for a specified period of time, in the discretion of the court, as follows:

1. For a period of six (6) months;
2. For a period of one (1) year; ~~or~~
3. For a period of two (2) years; or
4. For a period of six (6) months or until the person attains the age of eighteen (18) years, whichever period of time is longer.

The court shall send a copy of the Notification to the person first class, postage prepaid.

C. This section applies to ~~any~~:

1. Any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, transportation, distribution, or abuse of beer, alcohol, or any beverage containing alcohol or any controlled dangerous substance pursuant to paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes or any substance which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions; and

2. Any violation of Section 858 or Section 1272 of Title 21 of the Oklahoma Statutes.

SECTION 8. This act shall become effective September 1, 1994.

44-2-9005

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