

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1165

By: Haney of the Senate

and

Ross of the House

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; 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 of the court; adding certain disposition order relating to firearms; amending Section 1, Chapter 286, O.S.L. 1992, Section 3, Chapter 309, O.S.L. 1993, 21 O.S. 1991, Sections 1273, as amended by Section 2, Chapter 309, O.S.L. 1993 and 1276 (21 O.S. Supp. 1993, Sections 858, 1271.1 and 1273), which relate to firearms; modifying certain penalties relating to the confiscation and forfeiture of certain weapons; providing procedures related thereto; defining term; prohibiting minor from selling, purchasing, or trading certain firearms or weapons; expanding certain prohibitions relating to minors, firearms and weapons; authorizing minor to transport rifle or shotgun for hunting or recreational purposes; modifying certain penalties; increasing certain penalties; providing certain liability for civil damages; 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 second or 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 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 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)~~ One Thousand Dollars (\$1,000.00), or ordered to perform community service not exceeding ~~forty (40)~~ two hundred (200) 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.

SECTION 3. 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~~ this title, each such prohibited weapon and firearm ~~may~~ shall be confiscated and forfeited by law to the confiscating State of Oklahoma by the law enforcement authority. Such confiscation and forfeiture shall ~~not~~ require that criminal charges be filed against the minor.

B. The legal owner, seller or person who knowingly and willingly furnished to the minor without lawful purpose any weapon or firearm confiscated pursuant to the provisions of this section shall be in violation of the provisions of Section 1273 of this title. However, ~~when~~ if the owner of a weapon or firearm confiscated pursuant to the provisions of this section declares by sworn affidavit that such weapon or firearm has been taken by a the minor without the permission of the owner, said owner shall be deemed not to be in violation of Section 1273 of this title, and the weapon or firearm shall be returned to the owner pursuant to the procedures provided in Section 1321 of Title 22 of the

Oklahoma Statutes, provided the possession of such weapon or firearm by ~~an adult~~ the owner is not otherwise prohibited by law.

C. Any weapon or firearm confiscated and forfeited by law to any law enforcement authority shall not be sold at public auction, but when no longer needed as evidence in the criminal proceeding the confiscating authority may lease any firearm confiscated and forfeited by law pursuant to this section to any law enforcement agency for a period of one (1) year and such lease may be renewed each year thereafter at the discretion of such authority to assist in the enforcement of the laws of this state or its political subdivisions. Any weapon or firearm deemed by the confiscating authority to be inappropriate for lease shall be destroyed.

D. For purposes of this section, the term "confiscate" shall not be construed to prohibit any parent, guardian or other adult person from removing or otherwise seizing from any minor any weapon or firearm in the minor's possession. Provided however, no school authority shall return any weapon or firearm removed or otherwise seized from any minor to any person, and shall immediately deliver such weapon or firearm to a law enforcement authority for prosecution and forfeiture.

SECTION 4. 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 minor to sell, purchase, or trade any firearm or weapon designated in Section 1272 of this title.

B. It shall be unlawful for any person ~~within this state,~~ to sell, trade or give to any minor any ~~of the arms~~ firearms or ~~weapons~~ weapon designated in Section 1272 of this title; ~~provided,~~ the provisions of this.

C. This section shall not prohibit a custodial parent, legal guardian or other adult living in the home with a minor child from giving ~~his or her minor~~ such child a rifle or shotgun for lawfully authorized participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting events, including traveling to and from such events with the

unloaded rifle or shotgun, if the possession of the rifle or shotgun is not otherwise prohibited by law.

D. Any person violating any provision of this section shall, upon conviction, be punishable as provided in Section 1276 of this title. In addition, such person or persons shall be liable for civil damages for any injury or death to any person resulting from being shot by said minor.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1276, is amended to read as follows:

Section 1276. Any person violating the provisions of ~~any one of the foregoing sections~~ Sections 1271.1 through 1272 of this title, shall ~~en~~:

1. On conviction of the first conviction offense, be ~~adjudged~~ deemed guilty of a misdemeanor ~~and be punished~~, punishable by a fine ~~of not less than Twenty-five Dollars (\$25.00) nor more than Fifty Dollars (\$50.00)~~ exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail not to exceed ~~thirty (30) days~~ One (1) year or by both at the discretion of the court such fine and imprisonment. ~~On the;~~ and

2. On conviction of a second and every subsequent conviction, ~~the party offending shall on conviction be fined~~ offense, be deemed guilty of a felony, punishable by a fine of not less than ~~Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00)~~ Five Thousand Dollars (\$5,000.00), or be imprisoned in the ~~county jail not less than thirty (30) days nor more than three (3) months~~ State Penitentiary not to exceed five (5) years, or by both, at the discretion of the court such fine and imprisonment.

SECTION 6. This act shall become effective September 1, 1994.

44-2-9462 SD