

ENROLLED SENATE
BILL NO. 781

By: Smith of the Senate

and

Henshaw, Davis, Vaughn
(Ray) and Perry of the
House

An Act relating to child support; amending 21 O.S. 1991, Section 852, as amended by Section 1, Chapter 173, O.S.L. 1993 (21 O.S. Supp. 1993, Section 852), which relates to penalties for failure to provide for a child; making failure to provide child support for certain time period a felony; amending 43 O.S. 1991, Section 527, which relates to the Uniform Child Custody Jurisdiction Act; modifying penalty; modifying defenses; authorizing protective custody under certain circumstances; requiring school districts to develop a student information referral procedure; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 852, as amended by Section 1, Chapter 173, O.S.L. 1993 (21 O.S. Supp. 1993, Section 852), is amended to read as follows:

Section 852. A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control ~~over~~ of a child as defined in Section 1101 of Title 10 of the Oklahoma Statutes who willfully omits, without lawful excuse, ~~to perform any duty imposed upon such parent, guardian, or person having custody or control of a child by law~~ to furnish necessary food, clothing, shelter, monetary child support, or medical attendance for such child which is imposed by law, upon conviction, is guilty of a misdemeanor; ~~provided,~~ provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments after September 1, 1993, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall, upon conviction thereof, be guilty of a felony which is punishable in the same manner as any subsequent conviction pursuant to the provisions of this section. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attention shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or

control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

B. Any person who leaves the state to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, is guilty of a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

D. Nothing contained ~~herein~~ in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect ~~his~~ the child's health or welfare.

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

F. Except for a third or subsequent conviction, all felony convictions herein shall be administered under the provisions of the Community Sentencing Act.

~~B.~~ G. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

SECTION 2. AMENDATORY 43 O.S. 1991, Section 527, is amended to read as follows:

Section 527. A. Any parent or other person who violates an order of any court of this state, granting the custody of the child under the age of eighteen (18) years, to any person, agency or institution, with the intent to deprive the lawful custodian of the custody of a child under the age of eighteen (18) years, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a period of not more than five (5) years or by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. It shall be an affirmative defense either:

1. That the offender reasonably believes that the act was necessary to preserve the child from physical, mental or emotional danger to his welfare; or

2. That the child, being at the time more than fourteen (14) years old, was taken away at his own instigation without enticement

and without purpose to commit a criminal offense with or against the child and that the offender had a reasonable belief that if not taken, the child would run away to a location unknown to either the custodial or noncustodial parent or would otherwise cause serious harm to himself. Provided, however, that such defenses shall not apply if the offender committed said act within thirty (30) days of an order of the district court relating to custody of the minor or unless the offender, within seventy-two (72) hours of the taking of the child:

- a. notifies the Department of Human Services of such removal and of the location of the child, and
- b. files an action for modification of the custody order with the court having proper jurisdiction of the case.

Upon receipt of such notification, the Department of Human Services shall immediately notify the local law enforcement agency nearest to the current location of the child of the taking and where the child is located.

C. If a child is removed from the custody of his lawful custodian, pursuant to the provisions of this section, any law enforcement officer may take such child into custody without a court order, and unless there is a specific court order directing a peace officer to take the child into custody and release or return the child to his lawful custodian, such child shall be held in protective custody until the right of custody is determined by the court having proper jurisdiction of the matter.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-103.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

By January 1, 1995, each school district in this state shall develop a student information referral procedure whereby the Oklahoma State Bureau of Investigation would, if authorized by a parent or legal guardian at any time, have access through a designated district employee to information currently maintained by the school district not prohibited from being released to law enforcement officers by state or federal law regarding past and present students in the district including but not limited to names of the parents of the student and their addresses.

SECTION 4. This act shall become effective September 1, 1994.
Passed the Senate the 27th day of April, 1994.

President of the Senate

Passed the House of Representatives the 5th day of April, 1994.

Speaker of the House of Representatives