

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2286

By: Boyd (Laura)

AS INTRODUCED

An Act relating to schools; amending 10 O.S. 1991, Section 1107, as last amended by Section 5, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1107), which relates to detention of children; requiring certain persons to report students committing substance abuse offenses to certain school personnel; establishing substance abuse preassessment teams; providing for the appointment, membership and duties of such team; authorizing certain disclosures; providing for the destruction of certain measures; defining term; establishing school and community advisory teams; providing for membership and duties of such teams; requiring teachers to report substance abuse of students under certain conditions; limiting such teachers' liability; authorizing such reporting to law enforcement agencies under certain conditions; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1107, as last amended by Section 5, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1107), is amended to read as follows:

Section 1107. A. A child may be taken into custody prior to the filing of a petition:

1. By a peace officer, or employee of the court without a court order if the child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child; and

2. Pursuant to an order of the district court issued on the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child or there is probable cause to believe the child has committed a crime or is in violation of the terms of his probation, parole or order of the court.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the court at the time fixed. If detained, such child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court. If no judge be available locally, the

person having the child in custody shall immediately report his detention of the child to the presiding judge of the judicial administrative district, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a regional juvenile detention center, beyond the next two (2) judicial days unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in Section 1107.1 of this title. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent or other person appointed by the court, or be detained pursuant to the provisions of Section 1107.1 of this title in such place as shall be designated by the court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the court, or he shall be taken immediately before a judge of the district court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the court taking the child into custody shall immediately report the fact of the detention of the child to a judge of the district court in the county in which the child was taken into custody. If no judge is available locally, the detention shall be reported immediately to the presiding judge of the judicial administrative district, or if the presiding judge of the judicial administrative district cannot be reached, then to any judge regularly serving within the judicial administrative district.

Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the court, the court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to subsection B of Section 1104.1 of this title is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent, guardian or custodian of the child shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the

provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

E. A child who has been taken into custody as otherwise provided by this title who appears to be a child in need of mental health treatment may be admitted to a mental health facility on an emergency psychiatric basis or for an inpatient mental health evaluation or inpatient mental health treatment only in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes.

F. When any child is taken into custody pursuant to the provisions of this section, for a charge relating to alcohol or controlled dangerous substances, the peace officer or employee of the court taking the child into custody shall immediately report such fact to:

1. The school counselor;

2. The person in charge of student services;

3. The principal; or

4. The school's substance abuse preassessment team as established pursuant to Section 2 of this act.

Any such notification to the school in which such child is enrolled shall be in writing and shall include the offense for which such child was taken into custody. Any such notification shall be confidential and shall not be maintained in the child's permanent school record except as provided for in this act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.228a of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Each public school that participates in a school district substance abuse program shall establish a substance abuse preassessment team. The preassessment team shall be composed of

teachers, administrators, and if possible a school nurse, a school counselor or psychologist, a social worker, a substance abuse specialist, and other appropriate professional staff. The superintendent of the school district or designee shall designate the team members in the public schools. The preassessment team is responsible for addressing reports of substance abuse problems and making recommendations for appropriate responses to the individual reported cases.

B. Within forty-five (45) days after receiving an individual reported case, the preassessment team shall make a determination whether to provide the student and, in the case of a student less than eighteen (18) years of age, the student's parents with information about school and community services in connection with substance abuse. Data may be disclosed without consent in health and safety emergencies pursuant to applicable state and federal law, rules and regulations.

C. Destruction of records identifying individual students shall be governed by this section. If the preassessment team decides not to provide a student and, in the case of a student less than eighteen (18) years of age, the student's parents with information about school or community services in connection with substance abuse, records created or maintained by the preassessment team about the student shall be destroyed not later than six (6) months after the determination is made. If the preassessment team decides to provide a student and, in the case of a student less than eighteen (18) years of age, the student's parents with information about school or community services in connection with substance abuse, records created or maintained by the preassessment team about the student shall be destroyed not later than six (6) months after the student is no longer enrolled in the school district.

D. For purposes of this act, "substance abuse" means the abuse of alcohol or any controlled dangerous substance not prescribed for that student.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.228b of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The district superintendent, with the advice of the school board, shall establish a school and community advisory team to address substance abuse problems in the district. The school and community advisory team shall be composed of representatives from the school preassessment team established in Section 2 of this act, and to the extent possible, law enforcement agencies, the district attorney's offices, social service agencies, substance abuse treatment programs, parents, and the business community.

B. The community advisory team shall:

1. Build awareness of the substance abuse problem within the community, identify available treatment and counseling programs for students and develop good working relationships and enhance communication between the schools and other community agencies; and

2. Develop a written procedure clarifying the notification process to be used by the substance abuse preassessment team when a student is believed to be in possession of or under the influence of alcohol or a controlled dangerous substance. The procedure shall include contact with the student, and the student's parents or legal guardian in the case of a student less than eighteen (18) years of age.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.228c of Title 70, unless there is created a duplication in numbering, reads as follows:

A. A teacher who knows or has reason to believe that a student is using, possessing, or transferring alcohol or a controlled dangerous substance while on the school premises or involved in

school-related activities, shall immediately notify the school's substance abuse preassessment team of this information. A teacher who complies with this section shall not be held civilly liable for such report.

B. Nothing in this section prevents a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school premises or at school-sponsored events.

SECTION 5. This act shall become effective September 1, 1994.

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