

ENGROSSED SENATE
BILL NO. 1184

By: Kerr and Helton of the
Senate

and

Askins of the House

[juveniles - Alternative School Program -
codification - emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1507 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Office of Juvenile Affairs a program for juveniles to be known as the "Alternative School Program". For purposes of this section "Alternative School Program" means an out-of-home residential program based on a twenty-four-hour, seven-day-per-week supervision when not attending school classes.

B. The Office of Juvenile Affairs shall be responsible for the design and administration of the Alternative School Program and shall develop the Program in consultation and coordination with the Department of Education, the Department of Mental Health and Substance Abuse Services and the Department of Corrections. The Alternative School Program shall be an out-of-home residential program and shall include but not be limited to:

1. Specific eligibility criteria for placement into the Program.

- a. Children twelve (12) through seventeen (17) years of age who have been adjudicated delinquent for nonviolent offenses and who are at high risk of penetrating deeper into the juvenile justice system and who meet the specific eligibility criteria shall be eligible for the Program.
- b. Upon the recommendation of the court, as provided by subsection G of this section, children adjudicated delinquent and placed in the community may be transferred to the Program for repeatedly demonstrating disciplinary problems while attending public school or by failing to attend school;

2. Placement of a child in the Program for a period of not less than nine (9) weeks nor more than two (2) years with intense community supervision for not less than ninety (90) days following completion of the Program;

3. An educational program, which shall be a year-round school for eligible adjudicated delinquents;

4. Recreational, physical fitness and disciplinary components; and

5. Program goals, which shall emphasize positive behavior changes with an awareness of the cognitive, emotional and social skills deficiencies of the youth served and provide direction and encouragement for a successful transition from childhood into adulthood without reoccurrence of antisocial behaviors.

C. The Alternative School Program may include:

1. Subject to the availability of funds for that purpose, provision for students who comply with designated disciplinary and physical programs and receive no demerits to be compensated in an amount to be determined by the Office of Juvenile Affairs; and

2. Any student attending and successfully completing the Alternative School Program shall be eligible for a high school

diploma or its equivalency upon reaching senior class status. All teachers participating in the Alternative School Program shall be required to be state certified by the State Board of Education.

D. In establishing the Program, the Office of Juvenile Affairs shall give priority to the use of existing facilities including any abandoned or excess school facilities and shall, subject to appropriations, attempt to place programs in the four quadrants of the state.

E. The Department of Corrections shall cooperate with the Office of Juvenile Affairs for the design and implementation of the Alternative School Program. The Department of Corrections shall be responsible for implementing the recreational, physical fitness and disciplinary components of the Program.

F. The Board of Juvenile Affairs shall promulgate rules as necessary for the implementation of the Alternative School Program. The implementation of the Program shall be subject to legislative appropriations specifically for that purpose.

G. Upon the filing of a petition in a juvenile matter by a school superintendent or principal, the court may recommend that a child adjudicated delinquent and placed in the community be transferred to the Alternative School Program for repeatedly demonstrating disciplinary problems while attending public school or by failing to attend school. The child may be placed in the Program by the Office of Juvenile Affairs when the child otherwise meets the specific eligibility criteria and there is available space in the Program.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1104.2, as last amended by Section 163, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7306-1.1), is amended to read as follows:

Section 7306-1.1 A. Any person thirteen (13), fourteen (14), fifteen (15), sixteen (16) or seventeen (17) years of age who is

charged with murder, kidnapping, robbery with a dangerous weapon, robbery in the first degree if personal injury results, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree after three or more adjudications for committing either burglary in the first degree or burglary in the second degree, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, sodomy, trafficking in illegal drugs, manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, or assault and battery with a deadly weapon, shall be considered ~~as~~ an adult for purposes of prosecution and sentencing. Juveniles who are convicted as adults shall be incarcerated in separate juvenile detention facilities.

~~B. Any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree shall be considered as an adult.~~

~~C. Upon the arrest and detention, such accused~~ of a person subject to subsection A of this section, the person shall have all of the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

~~D. C. 1.~~ 1. Upon the filing of an information against such accused a person subject to subsection A of this section, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of

~~such~~ the accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

~~E.~~ D. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the

accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case ~~at~~ in the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether or not to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall consider and state that the court has considered each of the guidelines in reaching its decision.

~~F.~~ E. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child and the case is transferred to the juvenile division of the district court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

~~G.~~ F. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection F of this section shall be a final order, appealable when entered.

SECTION 3. 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.

Passed the Senate the 4th day of March, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker of the House of Representatives