

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2397

By: Seikel

AS INTRODUCED

An Act relating to domestic abuse; amending 22 O.S. 1991, Sections 60.1, as last amended by Section 1, Chapter 297, O.S.L. 1995, 60.2, as last amended by Section 55, Chapter 290, O.S.L. 1994, 60.3, as last amended by Section 56, Chapter 290, O.S.L. 1994, 60.4, as last amended by Section 57, Chapter 290, O.S.L. 1994 and 60.6, as last amended by Section 2, Chapter 297, O.S.L. 1995 (22 O.S. Supp. 1995, Sections 60.1, 60.2, 60.3, 60.4 and 60.6), which relate to the Protection from Domestic Abuse Act; transferring certain responsibility of juveniles and children in need of supervision to the Department of Juvenile Justice; modifying forms relating to procedure orders; modifying certain orders; amending Section 71, Chapter 352, O.S.L. 1995, Section 72, Chapter 352, O.S.L. 1995 and Section 114, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Sections 7301-1.2, 7301-1.3 and 7303-1.1), which relate to children adjudicated or alleged to be in need of supervision; modifying terms; authorizing certain custody; providing for procedures; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 60.1, as last amended by Section 1, Chapter 297, O.S.L. 1995 (22 O.S. Supp. 1995, Section 60.1), is amended to read as follows:

Section 60.1 As used in ~~Section 60 et seq. of this title~~ the Protection from Domestic Abuse Act and in the Domestic Abuse Reporting Act, Sections 40.5 ~~and 40.6~~ through 40.7 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury;

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, foster parents, children,

persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped; and

5. "Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 60.2, as last amended by Section 55, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1995, Section 60.2), is amended to read as follows:

Section 60.2 A. A victim of domestic abuse, a victim of stalking, a victim of harassment, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of ~~Section 60 et seq. of this title~~ the Protection from Domestic Abuse Act.

1. Such person may seek relief by filing a petition for protective order with the district court in either the county in which the victim resides or the county in which the defendant resides.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as provided by Section 40.3 of this title.

B. The petition forms shall be provided by the clerk of the court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

_____)

Plaintiff)

)

vs.) Case No. _____
)
)
_____)
Defendant)

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

- The defendant caused or attempted to cause serious physical harm to _____.
- The defendant threatened _____ with imminent serious physical harm.
- The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

- married
- divorced
- parent and child
- persons related by blood
- persons related by marriage
- present spouse of an ex-spouse
- persons living in the same household

- persons formerly living in the same household
- biological parents of the same child
- not related

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

- married
- divorced
- parent and child
- persons related by blood
- persons related by marriage
- present spouse of an ex-spouse
- persons living in the same household
- persons formerly living in the same household
- biological parents of the same child

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

- order the defendant not to abuse or injure the victim.
- order the defendant not to visit, assault, molest or otherwise interfere with the victim.
- order the defendant not to threaten the victim.
- order the defendant to cease stalking the victim.
- order the defendant to cease harassment of the victim.
- order the defendant to leave the residence located at _____ on or before _____.
- order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in the temporary custody of the Department of

~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

[] _____ (describe other relief that plaintiff requests)

(B) [] The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

[] order the defendant not to abuse or injure the victim.

[] order the defendant not to visit, assault, molest or otherwise interfere with the victim.

[] order the defendant not to threaten the victim.

[] order the defendant to cease stalking the victim.

[] order the defendant to cease harassment of the victim.

[] order the defendant to leave the residence located at _____ on or before _____.

[] order the defendant who is a minor child to leave the residence located at _____ by immediately placing the defendant in the temporary custody of the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

[] _____ (describe other relief that plaintiff requests)

[] order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

[] order the defendant to pay the court costs of this action
in the sum of _____ on or before
_____.

7. [] Victim is a resident of the county wherein this petition is
filed.

[] Defendant is a resident of the county wherein this petition
is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but
the truth in this petition.

Plaintiff

Witness my hand and seal,

affixed on the ___ day of _____, 19__.

Court Clerk, Deputy Court Clerk,
or Notary Public

C. No filing fee shall be charged the plaintiff at the time the
petition is filed. The court may assess court costs and filing fees
to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above
or, at the request of the plaintiff, the clerk of the court or the
victim-witness coordinator shall prepare or assist the plaintiff in
preparing the same.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 60.3, as
last amended by Section 56, Chapter 290, O.S.L. 1994 (22 O.S. Supp.
1995, Section 60.3), is amended to read as follows:

Section 60.3 A. If a plaintiff requests an emergency ex parte
order pursuant to Section 60.2 of this title, the court shall hold
an ex parte hearing on the same day the petition is filed. The
court may, for good cause shown at the hearing, issue any emergency
ex parte order that it finds necessary to protect the victim from
immediate and present danger of domestic abuse, stalking, or

harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim;
4. An order to the defendant not to stalk the victim;
5. An order to the defendant not to harass the victim;
6. An order to the defendant to leave the residence; or
7. An order removing the defendant who is a minor child from the residence by immediately placing the child in the temporary custody of the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

B. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 40.3 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 60.4, as last amended by Section 57, Chapter 290, O.S.L. 1994 (22 O.S. Supp. 1995, Section 60.4), is amended to read as follows:

Section 60.4 A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Ex parte orders

shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken into custody by the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

B. Within fifteen (15) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when a minor child has been removed from the residence and placed in the temporary custody of the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim, including committing any minor child into the custody of the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

3. An order to the defendant not to threaten the victim;
4. An order to the defendant to cease stalking the victim;
5. An order to the defendant to cease harassment of the victim;
6. An order to the defendant to leave the residence;
7. An order awarding attorney fees;
8. An order awarding court costs; and
9. An order placing any minor child in the custody of the

Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of supervision.

E. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic abuse against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

G. Any protective order issued pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If a child has been removed from the residence of a parent or custodial adult because of repeated domestic abuse committed by the child and is placed in the custody of the Department of ~~Human Services~~ Juvenile Justice pursuant to Section 7303-1.1 of Title 10 of the Oklahoma Statutes as a child in need of

supervision, the parent or custodial adult may refuse the return of such child to the residence, until the child demonstrates a cessation of abusive behavior.

H. No order issued under the Protection from Domestic Abuse Act, ~~Section 60 et seq. of this title,~~ shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 60.6, as last amended by Section 2, Chapter 297, O.S.L. 1995 (22 O.S. Supp. 1995, Section 60.6), is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section any person who ~~has~~:

1. Has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment; and

~~B. Any person who after~~ 2. After a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

~~C. B.~~ 1. Any person who has been served with an ex parte or final protective order who violates ~~said~~ the protective order and

without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

~~D.~~ C. The minimum sentence of imprisonment issued pursuant to the provisions of ~~subsections~~ paragraph 2 of subsection A and subsection B ~~and C~~ of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

~~E.~~ D. In addition to any other penalty specified by this section, the court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

~~F.~~ E. Ex parte and final protective orders shall include notice of these penalties.

~~G.~~ F. When a minor child violates the provisions of any protective order, the court may, ~~if~~ :

1. Place the minor with the Department of Juvenile Justice as a child or juvenile in need of supervision;

2. Place the minor with the Department of Juvenile Justice as a delinquent child or juvenile;

3. If the violation is to be heard in a juvenile proceeding, order the child to participate in counseling services necessary to bring about the cessation of domestic abuse against the victim; and
~~order~~

4. Order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

SECTION 6. AMENDATORY Section 71, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7301-1.2), is amended to read as follows:

Section 7301-1.2 It is the intent of the Legislature that Chapter 73 of this title shall be liberally construed, to the end that its purpose may be carried out.

The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent or children adjudicated or alleged to be in need of supervision is to promote the public safety and reduce juvenile delinquency. This purpose should be pursued through means that are fair and just, that:

1. Recognize the unique characteristics and needs of juveniles or children adjudicated or alleged to be in need of supervision;

2. Give juveniles or children adjudicated or alleged to be in need of supervision access to opportunities for personal and social growth;

3. Maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior;

4. Provide a system for the rehabilitation and reintegration of juvenile delinquents into society;

5. Preserve and strengthen family ties whenever possible, including improvement of home environment;

6. Remove a juvenile or child adjudicated or alleged to be in need of supervision from the custody of parents if the welfare and safety of the juvenile or child adjudicated or alleged to be in need of supervision or the protection of the public would otherwise be endangered;

7. Secure for any juvenile or child adjudicated or alleged to be in need of supervision removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile or child in becoming a responsible and productive member of society; and

8. Provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

SECTION 7. AMENDATORY Section 72, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7301-1.3), is amended to read as follows:

Section 7301-1.3 When used in the Oklahoma Juvenile Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Article III of the Oklahoma Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

2. "Alternatives to secure detention" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Board of Juvenile Affairs and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. "Board" means the Board of Juvenile Affairs;

4. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree pursuant to subsection B of Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes, or any individual against whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of Title 10 of the Oklahoma Statutes, any individual against whom the imposition of judgment and sentence has been deferred after certification as an adult pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes, shall continue to be subject to the jurisdiction of the juvenile court;

5. "Child or juvenile in need of mental health treatment" means a juvenile in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act;

6. "Child or juvenile in need of supervision" means a juvenile who:

- a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian, ~~or~~
- b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or

other custodian for a substantial length of time or without intent to return, ~~or~~

c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if the juvenile is subject to compulsory school attendance, or

d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

7. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the juvenile, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

8. "Community residential center" means a residential facility for no more than twenty juveniles which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community;

9. "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

10. "Delinquent child or juvenile" means a juvenile who:

- a. has violated any federal or state law or municipal ordinance including but not limited to a minor who has been served with an ex parte or final protective order and is in violation of such protective order pursuant to Section 60.6 of Title 22 of the Oklahoma Statutes except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, or has violated any lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or
- b. has habitually violated traffic laws or traffic ordinances;

11. "Department" means the Department of Juvenile Justice;

12. "Deputy Director" means the Deputy Director of the Department of Juvenile Justice;

13. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

14. "Executive Director" means the Executive Director of the Office of Juvenile Affairs;

15. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles;

16. "Group home" means a residential facility housing no more than twelve juveniles with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents;

17. "Independent living program" means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to

minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

18. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident;

19. "Juvenile detention facility" means a secure facility which meets the certification standards of the Department and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children;

20. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

21. "Office" means the Office of Juvenile Affairs;

22. "Person responsible for a juvenile's health or welfare" includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

23. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Oklahoma Juvenile Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

24. "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a Department of Juvenile Justice facility directly or by contract under prescribed conditions and under supervision by the Department, subject to return to the court for violation of any of the conditions prescribed;

25. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

26. "Secure detention" means the temporary care of juveniles who require secure custody in physically restricting facilities:

- a. while under the continuing jurisdiction of the court pending court disposition, or
- b. pending placement by the Department of Juvenile Justice after adjudication;

27. "Training school" or "secure facility" means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents; and

28. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment

training, and other appropriate independent living skills training as a part of the transitional living program.

SECTION 8. AMENDATORY Section 114, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7303-1.1), is amended to read as follows:

Section 7303-1.1 A. A child may be taken into custody prior to the filing of a petition alleging that the child is delinquent or in need of supervision:

1. By a peace officer, without a court order for any criminal offense for which the officer is authorized to arrest an adult without a warrant, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child 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;

2. By an employee of the court without a court order, if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child 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;

3. 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 shall 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 probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the court; ~~and~~

4. By an emergency ex parte or a final protective order of the district issued pursuant to the Protection from Domestic Abuse Act. The minor, pursuant to such emergency ex parte or final protective order, shall be placed in the custody of the Department of Juvenile Justice; and

5. By order of the district court pursuant to subsection E of this section when the child is in need of medical or mental health treatment or other action in order to protect the child's health or welfare and the parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action.

B. ~~Whenever~~ Except as otherwise provided by paragraph 4 of subsection A of this section, whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the child's parent, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to the court at the time fixed if a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment. In addition, if a parent, legal guardian, legal custodian, attorney or other responsible adult is notified that the child has been taken into custody, it shall be a misdemeanor for such person to refuse to

assume custody of the child within a timely manner. If detained, the 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 the 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. 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, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court, or be detained pursuant to Article IV of the Oklahoma Juvenile Code in such place as shall be designated by the court, subject to further order.

C. 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 the health of the child, 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 the child's parent, legal guardian, legal custodian, or other person having custody and control of the child

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 child's parent, legal guardian, legal custodian, or other person legally competent to authorize said medical treatment. The child's parent, legal guardian, legal custodian, or other person having custody and control 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.

D. A child who has been taken into custody as otherwise provided by this Code 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.

E. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the child's health or welfare and the parent, legal guardian, legal custodian, or other responsible adult having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the child's health or welfare, the court may issue an emergency ex parte order upon application of the district attorney of the county in which the child is located. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need

of immediate medical treatment or other action to protect the child's health or welfare. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, legal guardian, legal custodian, or other responsible adult having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this section, whenever a child is in need of medical treatment to protect the child's health or welfare, or whenever any other action is necessary to protect the child's health or welfare, and the child's parent, legal guardian, legal custodian, or other person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the district attorney of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, legal guardian, legal custodian, or other person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, legal guardian, legal custodian, or other person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

b. 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 subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

SECTION 9. This act shall become effective July 1, 1996.

SECTION 10. 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.

45-2-8156

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