

SHORT TITLE: Juveniles and criminal law; authorizing certain substance abuse program; codification; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1152

By: Easley

AS INTRODUCED

An Act relating to juveniles and criminal law; amending Section 132, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7303-5.3), which relates to disposition orders for children adjudicated delinquent or in need of supervision; authorizing certain substance abuse program; modifying references; creating the Substance Abuse Prevention Program; providing short title; specifying eligibility for program; providing preference for age; authorizing certain investigation and consultation for suitability of participant; authorizing specific visitation sites and conditions; requiring a closure session and essay; authorizing certain conference; providing certain immunity from liability; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 132, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7303-5.3), is amended to read as follows:

Section 7303-5.3 A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation or under supervision in the home of the child, or in the custody of a suitable person, 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.

2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, 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 the child becoming delinquent or in need of supervision, 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 continuing to be delinquent or in need of supervision. 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 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 the ability of such person 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 to independent living.

No child who has been adjudicated in need of supervision only upon the basis of truancy or noncompliance with the mandatory school attendance law shall 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.

3. 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 any 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.

4. The court may order the child to receive counseling or other community-based services as necessary.

5. The court may order the child to participate in a military mentor program administered by the Oklahoma Military Department, if such program:

- a. is staffed by National Guard personnel who are trained by the Oklahoma Military Department pursuant to training standards established by the Department of Juvenile Justice and meets screening requirements established by the Department of Juvenile Justice,
- b. provides for adequate supervision of the child, and
- c. is designed to develop useful skills and abilities of the child and/or integrate the child into community service activities or public works projects.

The Office of Juvenile Affairs through its Department of Juvenile Justice and the Oklahoma Military Department are hereby authorized to enter into an agreement to provide for the effective development and implementation of this paragraph.

6. The court may order the child to participate in a Substance Abuse Prevention Program, pursuant to Section 2 of this act.

7. The court may commit the child to the custody of the Office of Juvenile Affairs under the supervision of the Department of Juvenile Justice. Any order adjudicating the child to be delinquent and committing the child to the Department of Juvenile Justice shall be for an indeterminate period of time; however, on or after the adoption of placement guidelines by the Juvenile Placement Guidelines Committee and approval of the guidelines by the Legislature, if the child is a serious juvenile offender or a habitual juvenile offender, as defined in the Serious and Habitual Juvenile Offender Act, the order shall be for a determinate period

of time established by the court within the range authorized by the placement guidelines, not to extend beyond such child's nineteenth birthday.

~~7.~~ 8. 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 child becoming delinquent or in need of supervision, 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.

~~8.~~ 9. 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. The court may order the parents or custodial parent of any child living with the parents or custodial parent at the time of the criminal or delinquent act of the child to remit the amount of restitution ordered by the court. The court may consider any hardship of such order on the parents or custodial parent of the child. The parents or custodial parent may be represented by an attorney in the matter of the order for remittance of the restitution by the parents or custodial parent. Provided however, if the court orders the parents or custodial parent to remit the amount of restitution as provided for in this paragraph, in addition to any other dispositional orders of the court, the court shall order the child to perform community service for the number of hours commensurate with the number of hours it would require under federal or state minimum wage to earn the amount paid by such child's parents or custodial parent under the order to remit restitution,
- 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 or order participation in a Substance Abuse Prevention Program, pursuant to Section 2 of this act, or both,
- 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 Juvenile Justice 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 preadjudicatory or postadjudicatory violations of probation,

h. on and after the adoption of placement guidelines by the Juvenile Placement Guidelines Committee and approval of such guidelines by the Legislature, the provisions of subparagraphs a through g of this paragraph shall be subject to said guidelines.

~~9.~~ 10. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

~~10.~~ 11. 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 and the protection of the public, 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. No child who has been adjudicated in need of supervision may be placed in a state training school.

C. 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. Nothing contained in this subsection shall prohibit 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 and nothing contained in this section shall prohibit detaining a juvenile pursuant to Section 7303-1.2 of ~~Title 10 of the Oklahoma Statutes~~ this title.

D. The court may revoke or modify a disposition order and may order redispotion. The child whose disposition is being considered for revocation or modification at said hearing shall have

the right to be represented by counsel, to present evidence in the child's behalf and to be confronted by witnesses against the child. Any revocation, modification or redispotion of the court in whole or in part shall be subject to review on appeal, as in other appeals of criminal cases. Bail may be allowed pending appeal. On or after the adoption of placement guidelines by the Juvenile Placement Guidelines Committee and approval of such guidelines by the Legislature, the court may make specific orders concerning the type and length of placement of said juvenile if the juvenile is committed to the Department.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308-1.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

This section shall be known and may be cited as the "Substance Abuse Prevention Program".

A. Whenever a person is adjudicated for, or is before the court for a violation of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes and is granted probation or is sentenced in any manner authorized by law, or is subject to the provisions of Section 6-107.1 of Title 47 of the Oklahoma Statutes, the court may, with the consent of the defendant, as a term and condition of the sentence or of probation, and in addition to any other condition required, order the defendant to participate in the Substance Abuse Prevention Program authorized by this section. The court shall give preference for participation in the program to persons who are at least thirteen (13) years of age but less than twenty-one (21) years of age at the time of the offense. The court shall require that the person drink absolutely no alcoholic beverage before reaching the age of twenty-one (21) years.

B. The court shall investigate and consult with the person, his or her counsel, if any, and any proposed supervisor of any visitation under the program, and the court may consult with any other person whom the court finds appropriate including, but not limited to, the person's parents or other family members, in order to ascertain that the person is suitable for the program, that the visitation will be educational and meaningful, and that there are no physical, emotional, or mental reasons to believe the program would not be appropriate or would cause any injury to the person.

C. To the extent that personnel and facilities are made available to the court, the court may include a requirement for supervised visitation for the person to one or more of the following:

1. A trauma facility, a hospital, or a general acute care hospital having a basic emergency medical service which regularly receives victims of vehicle accidents, between the hours of 10 p.m. and 2 a.m. on a Friday or Saturday night to observe appropriate victims of vehicle accidents involving drivers under the influence of alcohol, under the supervision of any of the following:

- a. a registered nurse trained in providing emergency trauma care or prehospital advanced life support,
- b. an emergency room physician, or
- c. an emergency medical technician-paramedic.

2. A medium or maximum security prison holding offenders with substance abuse-related offenses to hear the experience of those offenders who have been incarcerated as a result of their substance abuse, and to discuss potential consequences on the person's life if such activities continue. Such discussion shall be conducted under the supervision of the facility director and program staff.

3. If approved by the state medical examiner, to observe a corpse from a vehicle accident involving drivers under the influence of alcohol or other substance abuse and to participate in a discussion with the person viewing the corpse. Such discussion shall be conducted with the supervision of the program staff.

- a. as used in this paragraph "corpse" means victims whose condition is determined by the visitation supervisor to demonstrate the results of accidents involving drivers under the influence of alcohol or substance abuse deaths without being excessively gruesome or traumatic to the viewer,
- b. any visitation shall include, before any observation of a corpse, a comprehensive counseling session between the person and the visitation supervisor at which the supervisor shall explain and discuss the experiences which may be encountered during the visitation in order to ascertain whether the visitation is appropriate for the viewer,
- c. if at any time, whether before or during a visitation, the supervisor of the viewer determines that the visitation may be or is traumatic or otherwise inappropriate, or is uncertain whether the visitation may be traumatic or inappropriate, the visitation shall be terminated.

4. Visitation of an Acquired Immune Deficiency Syndrome (AIDS) center to observe persons inflicted with the Human Immune Deficiency Virus (HIV) or AIDS, and when available, discuss cases where infliction was related to the effects of alcohol consumption or substance abuse.

5. Visitation of a teenage pregnancy shelter to discuss with tenants and staff the consequence of teenage pregnancy as related to the consumption of alcohol or substance abuse.

D. The person shall be required to participate in a closure session conducted by the Substance Abuse Prevention Program staff to include a Victims Impact Panel discussion. This session shall be attended by the person's parents or family member, when available, for a discussion of the experiences of the program.

E. The person shall write a one-thousand-word essay to summarize the experience in the program. A copy of this essay will be forwarded to the judge.

F. The program may include a personal conference, after all visitation, between the sentencing judge responsible for coordinating the program and the person, his or her counsel, and, if available, the person's parents to discuss the experiences of the visitation and how those experiences may impact future conduct of the person.

G. The county, a court, any facility visited pursuant to the Program, the agent, employees, or independent contractors of the court, county, or facility visited pursuant to the Program, and any supervising person, shall not be liable for any civil damages resulting from any activities relating to the visitation, except for willful or grossly negligent acts.

SECTION 3. This act shall become effective November 1, 1996.

45-2-1757

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