

SHORT TITLE: Delinquents; granting immunity for certain liabilities; codification; emergency.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 864

By: Gustafson

AS INTRODUCED

An Act relating to delinquents; amending Section 132, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7303-5.3), which relates to kinds of disposition orders for delinquents; modifying references; granting liability immunity to certain entities for placement of certain juveniles in community service programs; exempting certain labors from Workers' Compensation Act; requiring certain medical care; prohibiting delinquent labor on private property; providing certain exceptions; defining terms; defining scope of immunity; providing for codification; and declaring an emergency.

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 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. 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. 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~~ Immunity from liability shall be granted as provided in Sections 2 and 4 of this act,
- 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~~ Immunity from liability shall be granted as provided in Sections 2 and 4 of this act. 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. Immunity from liability shall be granted as provided in Sections 2 and 4 of this act,

- 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,
- 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. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

10. 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.

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:

A. All provisions of this section and Section 3 of this act shall apply to eligible delinquent offenders who are:

1. Assigned to a community service program for any government entity of this state pursuant to a municipal court order;

2. Assigned to a community service program pursuant to a deferred prosecution agreement as authorized by Section 7303-4.6 of Title 10 of the Oklahoma Statutes;

3. Assigned to a community service program pursuant to the provisions of Section 7303-5.3 of Title 10 of the Oklahoma Statutes;

4. Assigned to a community service program as may be required in a military mentor program as authorized by paragraph 5 of subsection A of Section 7303-5.3 of Title 10 of the Oklahoma Statutes;

5. Assigned to a public work project pursuant to the provisions of the Work Restitution Fund as authorized by subparagraph d of paragraph 8 of subsection A of Section 7303-5.3 of Title 10 of the Oklahoma Statutes;

6. Assigned to a community service program as a condition of parole or probation; or

7. Assigned to a community service program offered by a nonprofit organization with or without compensation.

B. Any eligible delinquent offender described in subsection A of this section shall be exempt from the provisions of the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes. Provided, such exemption shall not apply to employment of such person by a private for-profit employer.

C. All state and local government agencies, nonprofit organizations, community service agencies, educational programs and other treatment programs are hereby immune from liability for torts committed by or against any eligible delinquent offender described in subsection A of this section; provided, those entities having court-mandated jurisdiction over the persons assigned community service shall provide basic or necessary medical care to the person in such instances.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308.1-2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful to use delinquent offenders assigned to community service on any property other than public property, except delinquent offenders may be used on private property for a public purpose. The work performed shall be to aid the federal or state government, state agency or a political subdivision in the exercise of a governmental function. Any person willfully violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor.

B. As used in this section:

1. "Public purpose" means a purpose affecting the inhabitants of the state or political subdivision utilizing delinquent offender labor, as a group, not merely as individuals. The work performed shall be essentially public and for the general good of the inhabitants of the state or political subdivision, and may include eradication of graffiti on private buildings;

2. "Graffiti" shall include, but not be limited to, any inscription, slogan or drawing, crudely scratched, drawn, printed, painted or scribbled on a wall or other surface visible to the public and which is likely to endanger the health or safety of the public. Provided, however, that this definition shall not be construed to include any sign or advertising device lawfully erected

or installed by the owner of the property or a lessee or any authorized agent; and

3. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308.1-3 of Title 10, unless there is created a duplication in numbering, reads as follows:

The State of Oklahoma, all counties and municipalities of this state and all of their officers, agents, servants and employees, and all nonprofit organizations are hereby immune from liability for torts committed by or against any eligible delinquent offender described in subsection A of Section 2 of this act.

The waiver of immunity of the state shall take effect at 12:01 a.m. on July 1, 1996.

SECTION 5. 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.

45-2-1543

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