

ENROLLED HOUSE
BILL NO. 3116

By: Askins of the House

and

Helton of the Senate

An Act relating to children; amending Section 72, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7301-1.3), as last amended by Section 7 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, which relates to definitions for the Oklahoma Juvenile Code; adding definition; amending Section 129, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7303-4.6), which relates to order of adjudication; modifying time periods for deferral of proceedings; amending Section 95, Chapter 352, O.S.L. 1995, as amended by Section 2, Chapter 259, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7302-6.3), which relates to rules required in facilities; providing exception; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 72, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7301-1.3), as last amended by Section 7 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, 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 this title, 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 this title or Section 7306-2.5 of this title, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of this title, 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 this title, 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 this title, or any person fifteen (15) years of age or older and charged or certified as a youthful offender pursuant to the Youthful Offender Act; 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 this title, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of this title, or any individual who is not convicted as a youthful offender pursuant to the Youthful Offender Act, 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,
- 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,
- c. is willfully and voluntarily absent from school, as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, 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 intervention center" means a facility which serves as a receiving center for children who are taken into custody and which performs at least one of the functions provided for in subsection D of Section 7302-3.3 of this title;

9. "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;

10. "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;

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

- a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife

Conservation Code, the Oklahoma Vessel and Motor Regulation Act or the Oklahoma Boating Safety Regulation Act, 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, traffic ordinances or boating safety laws or rules;

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

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

14. "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;

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

16. "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. A facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

17. "Graduated sanctions" means a calibrated system of sanctions designed to ensure that juvenile offenders face uniform, immediate, and consistent consequences that correspond to the seriousness of each offender's current offense, prior delinquent history, and compliance with prior interventions;

18. "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. A group home shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

~~18.~~ 19. "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;

~~19.~~ 20. "Institution" means a residential facility offering care and treatment for more than twenty residents. An institution shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes. 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;

~~20.~~ 21. "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. A juvenile detention facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes;

~~21.~~ 22. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

~~22.~~ 23. "Office" means the Office of Juvenile Affairs;

~~23.~~ 24. "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 this title;

~~24.~~ 25. "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;

~~25.~~ 26. "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;

~~26.~~ 27. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

~~27.~~ 28. "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;

~~28.~~ 29. "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 relies on locked rooms and buildings, and fences for physical restraint in order to control behavior of its residents. A training school or secure facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Oklahoma Statutes; and

~~29.~~ 30. "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 2. AMENDATORY Section 129, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7303-4.6), is amended to read as follows:

Section 7303-4.6 A. If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, the court shall sustain the petition, and shall make an order of adjudication setting forth whether the child is delinquent or in need of supervision and shall adjudge the child as a ward of the court.

B. A court may defer delinquency adjudication proceedings for ~~ninety (90)~~ one hundred eighty (180) days if the child:

1. Is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a misdemeanor or that if committed by an adult would be grand larceny of property valued at One Hundred Dollars (\$100.00) or less;

2. Waives the privilege against self-incrimination and testifies, under oath, that the allegations are true;
3. Has not been previously adjudicated a delinquent; and
4. Presents to the court an oral or written request to attend a Teen Court program.

C. The Teen Court program must be approved by the court.

D. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the Teen Court program has been successfully completed.

E. The court may require a child who requests a Teen Court program to pay a fee, as determined by the court, not to exceed Twenty Dollars (\$20.00) to cover the costs of administration. The fee shall be deposited in the court clerk's official depository account. Eighty percent (80%) of the costs so paid shall be distributed to the organization sponsoring the Teen Court to be used for Teen Court operating expenses. The remaining twenty percent (20%) of said cost shall be paid by the court clerk to the court fund.

F. A court may defer delinquency proceedings for ~~ninety (90)~~ one hundred eighty (180) days for any child that has not been previously adjudicated delinquent, if the child and, if required by the court, the parent or legal guardian of the child agree to participate in an alternative diversion program for first-time offenders that has been approved by the court. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the alternative diversion program for first-time offenders has been successfully completed. The records of a case dismissed pursuant to this subsection shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

G. A court may defer delinquency proceedings for ~~ninety (90)~~ one hundred eighty (180) days for any child that has not been previously adjudicated delinquent, if the child agrees to participate in a military mentor program that has been approved by the court. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the military mentor program has been successfully completed. The records of a case dismissed pursuant to this subsection shall be subject to the provisions of Article VII of the Oklahoma Juvenile Code.

H. As used in this section:

1. "Alternative diversion programs for first-time offenders" means programs for juveniles who have been identified by law enforcement personnel, the district attorney, or the court as having committed acts which are not serious enough to warrant adjudication through the juvenile court process, but which do indicate a need for intervention to prevent further development toward juvenile delinquency. The program shall be administered, pursuant to contact with the Department of Juvenile Justice, by organizations designated as youth services agencies in accordance with Section 7302-3.6 of ~~Title 10 of the Oklahoma Statutes~~ this title;

2. "Teen Court program" means a program which provides an alternative judicial forum for cases involving juvenile offenders, in which teenage participants, under the supervision of an adult coordinator, may serve in various capacities within the courtroom, including jurors, lawyers, bailiffs and judges. Such program also may include participation by volunteer adult attorneys. The Teen Court hears cases involving juvenile offenders who are referred to the Teen Court by the district attorney or the district court and

assesses sentences such as participation in community work projects, counseling or rehabilitation programs; and

3. "Military mentor program" means a program administered by the Oklahoma Military Department as provided in Section 7303-5.3 of ~~Title 10 of the Oklahoma Statutes~~ this title.

SECTION 3. AMENDATORY Section 95, Chapter 352, O.S.L. 1995, as amended by Section 2, Chapter 259, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7302-6.3), is amended to read as follows:

Section 7302-6.3 A. The Board of Juvenile Affairs shall promulgate written rules, outline policies and procedures governing the operation of those facilities operated by or through contract with the Department of Juvenile Justice wherein juveniles may be housed. Said policies and procedures shall include, but not be limited to, standards of cleanliness, temperature and lighting, availability of medical and dental care, provision of food, furnishings, clothing and toilet articles, supervision, appropriate and permissible use of restriction and confinement, procedures for enforcing rules of conduct consistent with due process of law and visitation privileges.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;

2. A child shall have the opportunity to participate in physical exercise each day;

3. A child shall be allowed daily access to showers and the child's own clothing or individualized clothing which is clean. When a child is participating in an outdoor adventure program that takes the child away from the permanent facility, the child shall be provided with the opportunity to wash with soap and water daily;

4. A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband;

5. A child shall have reasonable opportunity to communicate and to visit with the child's family on a regular basis and to communicate with persons in the community;

6. A child shall have immediate access to medical care as needed and shall receive necessary psychological and psychiatric services;

7. A child in the custody or care of the Department shall be provided access to education including teaching, educational materials and books, provided, that such policies shall provide emphasis upon basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science, vocational-technical education, and other courses of instruction designed to assure that such children will be capable of being assimilated into society as productive adults capable of self-support and full participation;

8. A child shall have reasonable access to an attorney upon request;

9. A child shall be afforded a grievance procedure, including an appeal procedure;

10. A child's mental health needs and mental well-being will be met, protected and served through provision of guidance, counseling and treatment programs, staffed by competent, professionally qualified persons, serving under the supervision of licensed psychologists, psychiatrists or licensed clinical social workers as

defined by the regulations of the State Board of Licensed Social Workers; and

11. Upon leaving the custody of the Department, a child shall be afforded a copy of the literacy progress section of the individualized service plan developed for the child for continued use at the next school placement of the child.

C. Any contract or agreement between the Department of Juvenile Justice and the Department of Mental Health and Substance Abuse Services for the care and treatment of children in the custody of the Department of Juvenile Justice shall provide that the Department of Mental Health and Substance Abuse Services shall comply with the provisions of subsections A and B of this section and the provisions of Section 7302-6.4 of this title.

SECTION 4. This act shall become effective July 1, 1998.

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.

Passed the House of Representatives the 19th day of May, 1998.

Speaker of the House of
Representatives

Passed the Senate the 19th day of May, 1998.

President of the Senate