

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 390

By: Helton of the Senate

and

Smith (Hopper) of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to Oklahoma Military Department; amending Section 132, Chapter 352, O.S.L. 1995, as last amended by Section 8, Chapter 5, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7303-5.3), which relates to military mentor programs; providing for civilian staffing; clarifying language; amending 44 O.S. 1991, Sections 227 and 230, as amended by Section 1, Chapter 14, O.S.L. 1996 (44 O.S. Supp. 1998, Section 230), which relates to the Adjutant General of the State of Oklahoma; creating Architect Selection Board to replace former construction board; changing membership of Architect Selection Board from former construction board; providing for appointment to Board; providing duties of Adjutant General; providing for federal construction contracting procedures; deleting language; providing for promulgation of rules; providing an effective date; 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, as last amended by Section 8, Chapter 5, O.S.L. 1998 (10 O.S. Supp. 1998, 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. If the child is placed on probation, the court may impose a probation supervision fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. In counties having a juvenile bureau, the fee shall be paid to the juvenile bureau; in all other counties, the fee shall be paid to the Office of Juvenile Affairs.

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, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the child may require special education services in accordance with the Individuals with Disabilities Education Act (IDEA). 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 or qualified civilian 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. If the adjudication is for distribution of a controlled dangerous substance or possession with intent to distribute a controlled dangerous substance, the court may require that the offender be placed in a residential facility operated or contracted for by the Office of Juvenile Affairs. Said placement must occur within sixty (60) days of disposition unless extended by the court for an additional sixty (60) days.

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,

- 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 to supervise the performance of community service by the child. 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,
- 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.

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. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school district may disclose ~~education~~ educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication either the juvenile bureau in counties which have a juvenile bureau or the Office of Juvenile Affairs in all other counties shall notify the superintendent of the school district in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

D. No child who has been adjudicated in need of supervision may be placed in a state training school.

E. 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 this title.

F. 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.

SECTION 2. AMENDATORY 44 O.S. 1991, Section 227, is amended to read as follows:

Section 227. The architect for the construction of the armory building for the housing, occupancy, or quartering of the officers, personnel, and equipment of the National Guard of the State of Oklahoma shall be ~~chosen and employed~~ selected by a board ~~composed of~~ appointed by the Adjutant General of the State of Oklahoma, ~~the Commanding General of the 45th Division, and the Attorney General of the State of Oklahoma.~~ The Director of Public Affairs and to be named the Architect Selection Board. The Architect Selection Board shall be comprised of three (3) members from the Oklahoma National Guard Directorate of Engineering Office. The Adjutant General shall enter into contracts in the name of the State of Oklahoma for the construction of such armory building. The Oklahoma Military Department may use federal contracting procedures for construction of such armory building.

SECTION 3. AMENDATORY 44 O.S. 1991, Section 230, as amended by Section 1, Chapter 14, O.S.L. 1996 (44 O.S. Supp. 1998, Section 230), is amended to read as follows:

Section 230. A. The Adjutant General of the State of Oklahoma is hereby authorized to appoint such officers as are necessary to be designated as police officers (OMD), for the purpose of protecting all properties of, owned by or under the control of the Oklahoma National Guard wherever located in the State of Oklahoma. The Adjutant General shall ~~prescribe the duties for the officers thus appointed, designate their uniforms and fix their compensation upon appointment~~ promulgate rules which prescribe the duties for the officers thus appointed, designate their uniforms, fix their compensation upon appointment and provide for removal from their appointment. Each such police officer (OMD) shall be given a written commission evidencing his or her appointment and authority, together with a detailed description of his or her person in order to properly identify his or her official capacity; the form of such commission shall be prescribed by the Adjutant General.

B. Any police officer (OMD) appointed pursuant to the provisions of this section shall have, with the sole exception of the serving or execution of civil process, all the powers vested by law in peace officers in the protection and guarding of the grounds, buildings and equipment of, owned by or under the control of the Oklahoma National Guard. The police officer (OMD) shall:

1. Direct his or her attention to the prevention of improper conduct, interference with, or trespassing upon the property of, owned by or under the control of the Oklahoma National Guard; and

2. If required, make arrests and take into custody persons guilty of improper conduct or trespassing.

C. It shall be the duty of the district attorney of the district wherein the improper conduct, interference or trespassing is alleged to have taken place to prosecute such offense upon a complaint filed by such police officer (OMD).

SECTION 4. This act shall become effective July 1, 1999.

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.

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