

ENGROSSED HOUSE
BILL NO. 1295

By: Peters and Lamons of the
House

and

Crutchfield of the Senate

(juveniles - modifying definitions - agreements for
certain youth service programs - designation as
youth services agencies - Department of Juvenile
Justice - effective date -
emergency)

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

SECTION 1. AMENDATORY 10 O.S. 2001, 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 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 ~~short term~~ reception facility ~~to receive and hold juveniles~~ and assessment center for children who are taken into custody by law enforcement for an alleged violation of a probation or parole agreement, municipal ordinance or state law, as provided for in subsection D of Section 7302-3.5 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;

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;

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;

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;

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

23. "Municipal juvenile facility" means a facility other than a community intervention center that accepts a child under eighteen (18) years of age charged with violating a municipal ordinance and meets the requirements of Section 7303-1.2 of this title;

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

25. "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;

26. "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;

27. "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;

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

29. "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;

30. "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

31. "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 10 O.S. 2001, Section 7302-3.5, is amended to read as follows:

Section 7302-3.5 A. The Department of Juvenile Justice is authorized to enter into agreements to establish or maintain community-based youth service programs, shelters and community intervention centers out of local, state and federal monies.

B. The Department shall take all necessary steps to develop and implement a diversity of community services and community residential care as needed to provide for adequate and appropriate community-based care, treatment and rehabilitation of children in the custody of the Department. Such community services and

residential care shall be consistent with the treatment needs of the child and the protection of the public.

1. The Department shall, to the extent reasonable and practicable, provide community services, community residential care and community intervention centers to children in the custody of the Department through financial agreements, as authorized in Sections 7302-3.3 and 7302-3.4 of this title.

2. The Department shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services, community residential care and community intervention centers. A copy of such procedures shall be made available to any member of the general public upon request.

C. Any state agency letting grants or contracts for the establishment of community residential care or treatment facilities for children shall require, as a condition for receipt of such grants or contracts, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been made for providing the educational services to which residents of the facility are entitled pursuant to state and federal law.

D. 1. The Department shall ~~implement a pilot program for establishment and~~ maintain continued operation of community intervention centers. The centers shall be established pursuant to interlocal agreements between one or more municipalities and the Office of Juvenile Affairs pursuant to rules promulgated by the Office. The municipality may enter into subcontracts with one or more service providers, subject to the approval by the Office of Juvenile Affairs. The service provider, whether a municipality or other entity, must have access to the management information system provided for in Section 7302-3.8 of this title and must employ qualified staff, as determined by the Office of Juvenile Affairs.

2. The community intervention center shall serve as a short-term reception facility to receive and hold juveniles who have been taken into custody by law enforcement agencies for the alleged violation of a municipal ordinance or state law and for whom detention is inappropriate or unavailable. The community intervention center may be a secure facility. Juveniles held in the community intervention facility shall not be isolated from common areas other than for short-term protective holding for combative or self-destructive behavior, as defined by the Office of Juvenile Affairs.

3. Juveniles shall not be held in a community intervention center for more than twenty-four (24) hours.

4. The community intervention center shall perform the following functions:

- a. enter demographic information into the management information system provided for in Section 7302-3.8 of this title,
- b. immediately notify the parents or parent, guardian, or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable the adult with whom the juvenile resides, that the juvenile has been taken into custody and to pick up the juvenile, ~~and~~
- c. hold juveniles until they can be released to a parent, guardian, or other responsible adult or until a temporary placement can be secured, but in no event for longer than twenty-four (24) hours.

~~5. The community intervention center may perform the following functions:~~

- ~~a.~~ d. gather information to determine if the juvenile is in need of immediate medical attention, and

~~b.~~ e. conduct an initial on-site assessment pursuant to rules promulgated by the Office of Juvenile Affairs. Such initial assessment may be given without parental consent if the juvenile agrees to participate in the assessment, ~~and~~

~~e.~~ ~~conduct an assessment pursuant to a Problem Behavior Inventory or a Mental Status Checklist or an equivalent assessment instrument authorized by rules promulgated by the Office of Juvenile Affairs, if written permission to do so is obtained from the parent, guardian or other person legally responsible for the juvenile's care. Such person and the juvenile may review the assessment instrument prior to the assessment process, must be informed that participation in the assessment is voluntary and that refusal to participate shall not result in any penalty, and must sign a written acknowledgment that they were given an opportunity to review the assessment instrument. The on-site assessment shall be used to develop a service plan or recommendations to correct the behavior of the juvenile, to divert the progression of the juvenile into the juvenile justice system in a municipal or district court, to determine if the juvenile is in need of nonemergency medical treatment, and to determine if the juvenile is the victim of violence. Information derived from the initial on-site assessment shall not be used in any phase of prosecution but ~~may~~ shall be made available to be used by the court following adjudication for the dispositional order and may be used for referrals to social services.~~

~~6.~~ 5. A juvenile alleged to have committed an offense which would be a felony if committed by an adult may be fingerprinted at a community intervention center. No other juveniles shall be fingerprinted at community intervention centers.

~~7.~~ 6. Community intervention centers shall be certified pursuant to standards established and rules promulgated by the ~~Office~~ Board of Juvenile Affairs.

SECTION 3. AMENDATORY Section 4, Chapter 4, O.S.L. 2002 (10 O.S. Supp. 2004, Section 7302-3.6a), is amended to read as follows:

Section 7302-3.6a A. Funds specifically appropriated to the Office of Juvenile Affairs for designated Youth Services Agency programs for both the Department of Juvenile Justice and the Department of Human Services shall be made available through contracts negotiated by the Department of Juvenile Justice, to organizations designated by the Department of Juvenile Justice as "Youth Services Agencies". ~~Such designations~~ Designations shall be granted based on need, as indicated in the State Plan for Services to Children and Youth, and in accordance with criteria approved by the Board of Juvenile Affairs after full consideration of any recommendations of the Department of Human Services and the Oklahoma Association of Youth Services. Until the criteria is established by the Board, the criteria established by the Commission for Human Services shall remain in effect. The criteria for designation of Youth Services Agencies shall include but shall not be limited to:

1. Capability to deliver all or part of the compensable services enumerated in Section 7302-3.3 of Title 10 of the Oklahoma Statutes, if the Youth Services Agency is to provide such services;

2. Capability to deliver all or part of the compensable children's services that the Department of Human Services is authorized to provide for by contract with a private agency, if the Youth Services Agency is to provide such services;

3. Adequate and qualified staff who are available as needed, within a reasonable time after being contacted for services in each county served by the agency;

4. Adequate services in each county served by the agency;

5. Financial viability; and

6. A documented need for the local services to be offered.

B. The criteria for designation of Youth Services Agencies ~~also may~~ shall include:

1. Successful completion of peer review processes by the Oklahoma Association of Youth Services; and

2. ~~Such other~~ Other criteria as the Board of Juvenile Affairs ~~determines~~ and Oklahoma Association of Youth Services determine appropriate.

C. Each Youth Services Agency receiving, by grant or contract from the Department of Human Services on June 30, 1995, state funds specifically appropriated for community-based youth services programs, is hereby automatically designated a "Youth Services Agency".

D. The Department of Juvenile Justice, after the opportunity for an administrative hearing, may terminate the designation of a Youth Services Agency that:

1. Is seriously deficient in the administration of its program;

2. Loses financial viability; or

3. Fails to successfully complete the peer review process by the Oklahoma Association of Youth Services.

Any applicant organization denied designation as a Youth Services Agency may request an administrative hearing from the Department. The Board of Juvenile Affairs shall establish an administrative hearing and appeal process. Until the administrative hearing and appeal process is established, the hearing and appeal process established for this section by the Commission for Human Services shall remain in effect.

E. The Department of Juvenile Justice shall be the sole administrator of Youth Services Agency contracts. Any contracting procedure shall include a procedure for converting all contracts to a system of payment which will be structured in a manner that will allow for the receipt of all available federal funds.

F. The Department of Juvenile Justice and the Department of Human Services shall enter into a cooperative agreement that establishes procedures to ensure the continuation of services provided for in paragraph 2 of subsection A of this section by Youth Services Agencies. The Department of Juvenile Justice shall consult with the Department of Human Services when assessing the capability of a Youth Services Agency to deliver services pursuant to paragraph 2 of subsection A of this section.

G. The Office of Juvenile Affairs is authorized to contract with the Oklahoma Association of Youth Services for evaluation, training and materials for the First Time Offender Program and for statewide office support, including rental of office space and general technical assistance for Youth Services Agencies with which the Office of Juvenile Affairs has contracts.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7302-5.1, is amended to read as follows:

Section 7302-5.1 A. The Department of Juvenile Justice shall provide intake, probation and parole services for juveniles and may enter into agreements to supplement probationary services to juveniles in any county. The Department may participate in federal programs for juvenile probation officers, and may apply for, receive, use and administer federal funds for such purpose.

B. A pre-adjudicatory substance abuse assessment of a child may be conducted in conjunction with a court intake or preliminary inquiry pursuant to an alleged delinquent act or upon admission to a juvenile detention facility through the use of diagnostic tools

including, but not limited to, urinalysis, structured interviews or substance abuse projective testing instruments.

1. Information gained from the substance abuse assessment pursuant to this subsection shall be used only for substance abuse treatment and for no other purpose. The results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding or as the sole basis for the revocation of a community-based placement or participation in a community-based program.

2. The results of the substance abuse assessment may be given to the child's intake, probation or parole counselor, the parent or guardian of the child or to the child's attorney. In accordance with the guidelines established pursuant to the Serious and Habitual Juvenile Offender Program and Section 620.6 of this title, the counselor may also provide the results of the substance abuse assessment to medical personnel, therapists, school personnel or others for use in the treatment and rehabilitation of the child.

C. In accordance with the guidelines adopted pursuant to the Serious and Habitual Juvenile Offender Program, the Department of Juvenile Justice and the juvenile bureaus shall implement:

1. Court intake risk-assessment for children alleged or adjudicated to be delinquent;

2. The imposition of administrative sanctions for the violation of a condition of probation or parole;

3. A case management system for ensuring appropriate:

- a. diversion of youth from the juvenile justice system,
- b. services for and supervision of all youth on pre-adjudicatory or postadjudicatory probation or on parole, and for juvenile offenders in the custody of the Department of Juvenile Justice, and
- c. intensive supervision of serious and habitual offenders and communication between law enforcement

and juvenile court personnel and others regarding such offenders; and

4. Guidelines for juvenile court personnel recommendations to district attorneys regarding the disposition of individual cases by district attorneys.

D. 1. The Department of Juvenile Justice shall establish directly and by contract, the services necessary to implement the Serious and Habitual Juvenile Offender Program including, but not limited to:

- a. misdemeanor and non-serious first-time offender programs,
- b. tracking and mentor services,
- c. weekend detention,
- d. five-day out-of-home sanction placements,
- e. short-term thirty-day intensive, highly structured placements,
- f. transitional programs,
- g. substance abuse treatment and diagnostic and evaluation programs, and
- h. day treatment programs.

2. In implementing these services, the Department shall give priority to those areas of the state having the highest incidences of juvenile crime and delinquency.

E. 1. The following entities shall conduct, upon adjudication of a child as a delinquent or in need of supervision unless such child has been previously assessed within the six (6) months prior to such intake, a literacy skills assessment:

- a. the Department of Juvenile Justice,
- b. a first-time offender program within a designated youth services agency,
- c. any metropolitan county juvenile bureau, or
- d. any county operating a juvenile bureau.

2. Such assessment shall be conducted through the use of diagnostic tools which include, but are not limited to:

- a. structured interviews,
- b. standardized literacy testing instruments which measure the educational proficiency of the child, and
- c. any other measure used to determine:
 - (1) whether a child is reading at an age-appropriate level, and
 - (2) the child's capacity to read at such level.

3. The results of the literacy skills assessment required pursuant to this subsection shall be made available to the court by the district attorney for use in the disposition phase; provided, however, the results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding to determine whether a juvenile should be adjudicated. Provided, further, such results shall not be used as the sole basis for the revocation of a community-based placement or participation in a community-based program.

- 4. a. Upon request, the results of the literacy skills assessment shall be given to the following:
 - (1) the child's intake, probation or parole counselor,
 - (2) the parent or guardian of the child, or
 - (3) the child's attorney.
- b. In accordance with the guidelines established pursuant to the Serious and Habitual Juvenile Offender Program and Section 620.6 of this title, the counselor may also provide the results of the literacy skills assessment to therapists, school personnel or others for use in the training and rehabilitation of the child.

5. a. If the child is a juvenile placed in an institution or facility operated by the Department, the child shall be assessed and a literacy improvement program shall be implemented in accordance with Sections 7302-6.1 and 7302-6.3 of this title.
- b. If the child is adjudicated delinquent or in need of supervision or is being detained as part of a deferral of prosecution agreement, deferral to file agreement or a deferral sentence agreement, and the results of the literacy skills assessment show that the child is not reading at an age-appropriate level but has the capacity to improve his or her reading skills, the child shall be required to actively participate in a literacy skills improvement program which may include, but not be limited to, a program of instruction through a public or private school, including any technology center school, of this state or any other state. The child shall provide documentation of substantial quantifiable literacy improvement, sufficient to demonstrate reading proficiency at an age-appropriate or developmentally appropriate level; provided, however, failure to demonstrate substantial quantifiable literacy improvement shall not be the sole basis for not dismissing a case against a child.

F. The Department of Juvenile Justice shall implement and provide appropriate reintegration and transitional services for juveniles transitioning from out-of-home placements to home. Reintegration and transitional services shall include Community-at-Risk Services, sanctions and surveillance. These services shall be coordinated with all existing services available for juveniles under probation and parole, and in addition may include, but not be limited to:

1. Services for additional assessment, classification, screening and selection criteria for program placements, case management and services to the family;

2. Individualized case planning and management including, but not limited to, family evaluations and services and community involvement;

3. A balanced continuum of incentives and sanctions for juveniles;

4. A network and linkage to all existing community resources and social networks; and

5. Various methods and levels of supervision, tracking, mentoring and monitoring.

G. Any time within four (4) months, but not less than thirty (30) days, before the juvenile is released from an institution to probation or parole and who is in need of reintegration or transitional services in the determination of the Department, the Department shall begin working with the person or persons responsible for the juvenile's health and welfare, and any other persons who will be present in the home environment where the juvenile will be transitioned. The prerelease evaluations and services may further coordinate with any community resources and will be considered part of the individualized case plan and management for a successful reintegration and transition to the home environment and community.

H. Community intervention centers may be used for sanction services.

I. As used in this section:

1. "Community-at-Risk Services" means a community-based program provided to juveniles in custody or under the supervision of the Department of Juvenile Justice to prevent out-of-home placement and to reintegrate juveniles returning from placements. The program shall include, but not be limited to: treatment plan development,

counseling, diagnostic and evaluation services, mentoring, tutoring and supervision of youth in independent living. The program shall be administered pursuant to a contract with the Department of Juvenile Justice, by organizations designated as youth services agencies by law;

2. "Sanctions" means a consequence imposed upon a juvenile offender as a result of a criminal act or as a result of a violation of a condition of probation or parole; and

3. "Surveillance" means tracking, electronic monitoring, face-to-face contact or other services provided to a juvenile designed to account for their activities.

SECTION 5. This act shall become effective July 1, 2005.

SECTION 6. 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 15th day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate