

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2420

By: Bingman and Dank

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 2001, Section 10-105, as amended by Section 14, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2005, Section 10-105), which relates to school attendance; clarifying statutory language; providing an affirmative defense for parents and certain persons for violation of attendance requirements; providing for dismissal of charges upon validation of affirmative defense; providing for referral of child for filing of certain petition upon dismissal of charges; modifying penalty; making continued absences separate offenses; authorizing the court to order community service; allowing certain type of community service; authorizing the court to order certain conditions of release or sentencing; listing certain conditions; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 70 O.S. 2001, Section 10-105, as amended by Section 14, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2005, Section 10-105), is amended to read as follows:

Section 10-105. A. It shall be unlawful for a parent, guardian, or other person having custody of a child who is over the age of five (5) years, and under the age of eighteen (18) years, to neglect or refuse to cause or compel such child to attend and comply with the rules of some public, private or other school, unless other means of education are provided for the full term the schools of the district are in session or the child is excused as provided in this section. One-half (1/2) day of kindergarten shall be required of all children five (5) years of age or older unless the child is excused from kindergarten attendance as provided in this section. A child who is five (5) years of age shall be excused from

kindergarten attendance until the next school year after the child is six (6) years of age if a parent, guardian, or other person having custody of the child notifies the superintendent of the district where the child is a resident by certified mail prior to enrollment in kindergarten, or at any time during the first school year that the child is required to attend kindergarten pursuant to this section, of election to withhold the child from kindergarten until the next school year after the child is six (6) years of age. A kindergarten program shall be directed toward developmentally appropriate objectives for such children. The program shall require that any teacher employed on and after January 1, 1993, to teach a kindergarten program within the public school system shall be certified in early childhood education. All teachers hired to teach a kindergarten program within the public school system prior to January 1, 1993, shall be required to obtain certification in early childhood education on or before the 1996-97 school year in order to continue to teach a kindergarten program.

B. It shall be unlawful for any child who is over the age of twelve (12) years and under the age of eighteen (18) years, and who has not finished four (4) years of high school work, to neglect or refuse to attend and comply with the rules of some public, private or other school, or receive an education by other means for the full term the schools of the district are in session.

Provided, that this section shall not apply:

1. If any such child is prevented from attending school by reason of mental or physical disability, to be determined by the board of education of the district upon a certificate of the school physician or public health physician, or, if no such physician is available, a duly licensed and practicing physician;

2. If any such child is excused from attendance at school, due to an emergency, by the principal teacher of the school in which

such child is enrolled, at the request of the parent, guardian, custodian or other person having control of such child;

3. If any such child who has attained his or her sixteenth birthday is excused from attending school by written, joint agreement between:

- a. the school administrator of the school district where the child attends school, and
- b. the parent, guardian or custodian of the child.

Provided, further, that no child shall be excused from attending school by such joint agreement between a school administrator and the parent, guardian or custodian of the child unless and until it has been determined that such action is for the best interest of the child and/or the community, and that said child shall thereafter be under the supervision of the parent, guardian or custodian until the child has reached the age of eighteen (18) years; or

4. If any such child is excused ~~pursuant to subsection C of this section.~~

~~C.~~ A school district shall excuse a student from attending school for the purpose of observing religious holy days if before the absence, the parent, guardian, or person having custody or control of the student submits a written request for the excused absence. The school district shall excuse a student pursuant to this subsection for the days on which the religious holy days are observed and for the days on which the student must travel to and from the site where the student will observe the holy days.

~~D.~~ C. It shall be the duty of the attendance officer to enforce the provisions of this section. In the prosecution of a parent, guardian, or other person having custody of a child for violation of any provisions of this section, it shall be an affirmative defense that the parent, guardian, or other person having custody of the

child has made substantial and reasonable efforts to comply with the compulsory attendance requirements of this section but is unable to cause the child to attend school. If the court determines the affirmative defense is valid it shall dismiss the complaint against the parent, guardian, or other person having custody of the child and shall notify the school attendance officer who shall refer the child to the district attorney for the county in which the child resides for the filing of a Child in Need of Supervision petition against the child pursuant to the Oklahoma Juvenile Code.

D. Any parent, guardian, custodian, child or other person violating any of the provisions of this section, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than Five Dollars (\$5.00) nor more than Twenty-five Dollars (\$25.00) for the first offense, not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00) for the second offense, and not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each subsequent offense as follows:

1. For the first offense, a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), or imprisonment for not more than ten (10) days, or both such fine and imprisonment;

2. For the second offense, a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), or imprisonment for not more than twenty (20) days, or both such fine and imprisonment; and

3. For the third or subsequent offense, a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment.

Each day the child remains out of school after the oral and documented or written warning has been given to the parent, guardian, custodian, child or other person or the child has been

ordered to school by the juvenile court ~~may~~ shall constitute a separate offense.

E. At the trial of any person charged with violating the provisions of this section, the attendance records of the child or ward may be presented in court by any authorized employee of the school district.

F. The court may order the parent, guardian, or other person having custody of the child to perform community service in lieu of the fine set forth in this section. The court may require that all or part of the community service be performed for a public school district.

G. The court may order as a condition of release prior to judgment or as a condition of sentence upon conviction of the parent, guardian, or other person having custody of the child any conditions as the court considers necessary to obtain compliance with school attendance requirements. The conditions may include, but are not limited to, the following:

1. Verifying attendance of the child with the school;
2. Meeting with school officials;
3. Taking the child to school;
4. Taking the child to the bus stop;
5. Attending school with the child;
6. Undergoing medical, psychological, or psychiatric evaluations and following the recommendations of the evaluator;
7. Undergoing an evaluation for drug, alcohol, or other substance abuse and following the recommendations of the evaluator;
and
8. Taking the child for medical, psychological, or psychiatric evaluation or for drug, alcohol, or other substance abuse evaluation and following the recommendations of the evaluator.

SECTION 2. This act shall become effective July 1, 2006.

SECTION 3. 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.

50-2-8133 KB 01/11/06