

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1914

By: Griffin

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5
6 AS INTRODUCED

7 An Act relating to arrest of juveniles; amending 10A
8 O.S. 2011, Sections 2-2-402, as amended by Section
9 10, Chapter 404, O.S.L. 2013, and 2-2-503, as amended
10 by Section 14, Chapter 404, O.S.L. 2013 (10A O.S.
11 Supp. 2013, Sections 2-2-402 and 2-2-503), which
relate to adjudicative hearings and disposition
orders; prohibiting consideration of certain juvenile
matters for certain purposes; and declaring an
emergency.

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

14 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-2-402, as
15 amended by Section 10, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
16 2013, Section 2-2-402), is amended to read as follows:

17 Section 2-2-402. A. All cases of children shall be heard
18 separately from the trial of cases against adults. The adjudicative
19 hearings shall be conducted according to the rules of evidence, and
20 may be adjourned from time to time.

21 1. Except as provided by paragraph 2 of this subsection, the
22 hearings shall be private; however, all persons having a direct
23 interest in the case as provided in this paragraph shall be
24 admitted. Any victim, relative, legal guardian of a victim, or a

1 person designated by the victim who is not subject to the rule of
2 sequestration as a witness of a delinquent act shall be considered
3 to have a direct interest in the case, shall be notified of all
4 court hearings involving that particular delinquent act, and shall
5 be admitted to the proceedings. The court shall, however, remove
6 all persons not having a direct interest in the case or that are not
7 the parents or legal guardian of the child from any hearing where
8 evidence of the medical or behavioral health condition of the child
9 or specific instances of deprivation are being presented.
10 Stenographic notes or other transcript of the hearings shall be kept
11 as in other cases, but they shall not be open to inspection except
12 by order of the court or as otherwise provided by law.

13 2. Hearings related to the second or subsequent delinquency
14 adjudication of a child shall be public proceedings. The
15 adjudications relied upon to determine whether a hearing is a public
16 proceeding pursuant to this paragraph shall not have arisen out of
17 the same transaction or occurrence or series of events closely
18 related in time and location. Upon its own motion or the motion of
19 any of the parties to the hearing and for good cause shown, the
20 court may order specific testimony or evidence to be heard in
21 private; provided, the court shall not exclude any relative, legal
22 guardian of a victim, or a person designated by the victim who is
23 not subject to the rule of sequestration as a witness from the
24 hearing during testimony of the victim. For the purposes of this

1 paragraph, "good cause" shall mean a showing that it would be
2 substantially harmful to the mental or physical well-being of the
3 child if such testimony or evidence were presented at a public
4 hearing. The judge may, for good cause shown, open the court
5 hearings to educate members of the public about juvenile justice
6 issues; however, the identities of the juvenile respondents shall
7 not be published in any reports or articles of general circulation.

8 B. The child may remain silent as a matter of right in
9 delinquency hearings and in need of supervision hearings, and before
10 the child testifies, the child shall be so advised.

11 C. A decision determining a child to come within the purview of
12 the Oklahoma Juvenile Code shall be based on sworn testimony and the
13 child shall have the opportunity for cross-examination unless the
14 facts are stipulated or unless the child enters into a stipulation
15 that the allegations of the petition are true or that sufficient
16 evidence exists to meet the burden of proof required for the court
17 to sustain the allegations of the petition. In proceedings pursuant
18 to the Oklahoma Juvenile Code, the court may allow mileage as in
19 civil actions to witnesses and reimbursement for expert witnesses
20 but such shall not be tendered in advance of the hearing. If a
21 child is alleged to be delinquent and the facts are stipulated, the
22 judge shall ascertain from the child if the child agrees with the
23 stipulation and if the child understands the consequences of
24 stipulating the facts.

1 D. If the court finds that the allegations of a petition
2 alleging a child to be delinquent or in need of supervision are
3 supported by the evidence, the court shall sustain the petition, and
4 shall make an order of adjudication setting forth whether the child
5 is delinquent or in need of supervision and shall adjudge the child
6 as a ward of the court.

7 E. If the court finds that the allegations of the petition are
8 not supported by the evidence, the court shall order the petition
9 dismissed and shall order the child discharged from any detention or
10 restriction previously ordered. The parents, legal guardian or
11 other legal custodian of the child shall also be discharged from any
12 restriction or other previous temporary order.

13 F. Any arrest or detention under the Oklahoma Juvenile Code or
14 any adjudication in a juvenile proceeding shall not be considered an
15 arrest, detention or conviction for purposes of employment, civil
16 rights, or any statute, regulation, license, questionnaire,
17 application, or any other public or private purposes, unless
18 otherwise provided by law.

19 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-2-503, as
20 amended by Section 14, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
21 2013, Section 2-2-503), is amended to read as follows:

22 Section 2-2-503. A. The following kinds of orders of
23 disposition may be made in respect to children adjudicated in need
24 of supervision or delinquent:

1 1. The court may place the child on probation with or without
2 supervision in the home of the child, or in the custody of a
3 suitable person, upon such conditions as the court shall determine.
4 If the child is placed on probation, the court may impose a
5 probation fee of not more than Twenty-five Dollars (\$25.00) per
6 month, if the court finds that the child or parent or legal guardian
7 of the child has the ability to pay the fee. In counties having a
8 juvenile bureau, the fee shall be paid to the juvenile bureau; in
9 all other counties, the fee shall be paid to the Office of Juvenile
10 Affairs;

11 2. If it is consistent with the welfare of the child, the child
12 shall be placed with the parent or legal guardian of the child, but
13 if it appears to the court that the conduct of such parent,
14 guardian, legal guardian, stepparent or other adult person living in
15 the home has contributed to the child becoming delinquent or in need
16 of supervision, the court may issue a written order specifying
17 conduct to be followed by such parent, guardian, legal custodian,
18 stepparent or other adult person living in the home with respect to
19 such child. The conduct specified shall be such as would reasonably
20 prevent the child from continuing to be delinquent or in need of
21 supervision.

22 a. If it is consistent with the welfare of the child, in
23 cases where the child has been adjudicated to be in
24 need of supervision due to repeated absence from

1 school, the court may order counseling and treatment
2 for the child and the parents of the child to be
3 provided by the local school district, the county, the
4 Office or a private individual or entity. Prior to
5 final disposition, the court shall require that it be
6 shown by the appropriate school district that a child
7 found to be truant has been evaluated for learning
8 disabilities, hearing and visual impairments and other
9 impediments which could constitute an educational
10 handicap or has been evaluated to determine whether
11 the child has a disability if it is suspected that the
12 child may require special education services in
13 accordance with the Individuals with Disabilities
14 Education Act (IDEA). The results of such tests shall
15 be made available to the court for use by the court in
16 determining the disposition of the case.

17 b. In issuing orders to a parent, guardian, legal
18 guardian, stepparent or other adult person living in
19 the home of a child adjudicated to be a delinquent
20 child or in making other disposition of said
21 delinquent child, the court may consider the testimony
22 of said parent, guardian, legal guardian, stepparent
23 or other adult person concerning the behavior of the
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1 juvenile and the ability of such person to exercise
2 parental control over the behavior of the juvenile.

3 c. In any dispositional order involving a child age
4 sixteen (16) or older, the court shall make a
5 determination, where appropriate, of the services
6 needed to assist the child to make the transition to
7 independent living.

8 d. No child who has been adjudicated in need of
9 supervision only upon the basis of truancy or
10 noncompliance with the mandatory school attendance law
11 shall be placed in a public or private institutional
12 facility or be removed from the custody of the lawful
13 parent, guardian or custodian of the child.

14 e. Nothing in the Oklahoma Juvenile Code or the Oklahoma
15 Children's Code may be construed to prevent a child
16 from being adjudicated both deprived and delinquent if
17 there exists a factual basis for such a finding;

18 3. The court may commit the child to the custody of a private
19 institution or agency, including any institution established and
20 operated by the county, authorized to care for children or to place
21 them in family homes. In committing a child to a private
22 institution or agency, the court shall select one that is licensed
23 by any state department supervising or licensing private
24 institutions and agencies; or, if such institution or agency is in

1 another state, by the analogous department of that state. Whenever
2 the court shall commit a child to any institution or agency, it
3 shall transmit with the order of commitment a summary of its
4 information concerning the child, and such institution or agency
5 shall give to the court such information concerning the child as the
6 court may at any time require;

7 4. The court may order the child to receive counseling or other
8 community-based services as necessary;

9 5. The court may commit the child to the custody of the Office
10 of Juvenile Affairs. Any order adjudicating the child to be
11 delinquent and committing the child to the Office of Juvenile
12 Affairs shall be for an indeterminate period of time;

13 6. If the child has been placed outside the home, and it
14 appears to the court that the parent, guardian, legal custodian, or
15 stepparent, or other adult person living in the home has contributed
16 to the child becoming delinquent or in need of supervision, the
17 court may order that the parent, guardian, legal custodian,
18 stepparent, or other adult living in the home be made subject to any
19 treatment or placement plan prescribed by the Office or other person
20 or agency receiving custody of the child;

21 7. With respect to a child adjudicated a delinquent child, the
22 court may:

23 a. for acts involving criminally injurious conduct as
24 defined in Section 142.3 of Title 21 of the Oklahoma

1 Statutes, order the child to pay a victim compensation
2 assessment in an amount not to exceed that amount
3 specified in Section 142.18 of Title 21 of the
4 Oklahoma Statutes. The court shall forward a copy of
5 the adjudication order to the Crime Victims
6 Compensation Board for purposes of Section 142.11 of
7 Title 21 of the Oklahoma Statutes. Except as
8 otherwise provided by law, such adjudication order
9 shall be kept confidential by the Board,

10 b. order the child to engage in a term of community
11 service without compensation. The state or any
12 political subdivision shall not be liable if a loss or
13 claim results from any acts or omission of a child
14 ordered to engage in a term of community service
15 pursuant to the provisions of this paragraph,

16 c. order the child, the parent or parents of the child,
17 legal guardian of the child, or both the child and the
18 parent or parents of the child or legal guardian at
19 the time of the delinquent act of the child to make
20 full or partial restitution to the victim of the
21 offense which resulted in property damage or personal
22 injury.

23 (1) The court shall notify the victim of the
24 dispositional hearing. The court may consider a

1 verified statement from the victim concerning
2 damages for injury or loss of property and actual
3 expenses of medical treatment for personal
4 injury, excluding pain and suffering. If
5 contested, a restitution hearing to determine the
6 liability of the child, the parent or parents of
7 the child, or legal guardian shall be held not
8 later than thirty (30) days after the disposition
9 hearing and may be extended by the court for good
10 cause. The parent or parents of the child or
11 legal guardian may be represented by an attorney
12 in the matter of the order for remittance of the
13 restitution by the parent or parents of the child
14 or legal guardian. The burden of proving that
15 the amount indicated on the verified statement is
16 not fair and reasonable shall be on the person
17 challenging the fairness and reasonableness of
18 the amount.

19 (2) Restitution may consist of monetary reimbursement
20 for the damage or injury in the form of a lump
21 sum or installment payments after the
22 consideration of the court of the nature of the
23 offense, the age, physical and mental condition
24 of the child, the earning capacity of the child,

1 the parent or parents of the child, or legal
2 guardian, or the ability to pay, as the case may
3 be. The payments shall be made to such official
4 designated by the court for distribution to the
5 victim. The court may also consider any other
6 hardship on the child, the parent or parents of
7 the child, or legal guardian and, if consistent
8 with the welfare of the child, require community
9 service in lieu of restitution or require both
10 community service and full or partial restitution
11 for the acts of delinquency by the child.

12 (3) A child who is required to pay restitution and
13 who is not in willful default of the payment of
14 restitution may at any time request the court to
15 modify the method of payment. If the court
16 determines that payment under the order will
17 impose a manifest hardship on the child, the
18 parent or parents of the child, or legal
19 guardian, the court may modify the method of
20 payment.

21 (4) If the restitution is not being paid as ordered,
22 the official designated by the court to collect
23 and disburse the restitution ordered shall file a
24 written report of the violation with the court.

1 The report shall include a statement of the
2 amount of the arrearage and any reasons for the
3 arrearage that are known by the official. A copy
4 of the report shall be provided to all parties
5 and the court shall promptly take any action
6 necessary to compel compliance.

7 (5) Upon the juvenile attaining eighteen (18) years
8 of age, the court shall determine whether the
9 restitution order has been satisfied. If the
10 restitution order has not been satisfied, the
11 court shall enter a judgment of restitution in
12 favor of each person entitled to restitution for
13 the unpaid balance of any restitution ordered
14 pursuant to this subparagraph. The clerk of the
15 court shall send a copy of the judgment of
16 restitution to each person who is entitled to
17 restitution. The judgment shall be a lien
18 against all property of the individual or
19 individuals ordered to pay restitution and may be
20 enforced by the victim or any other person or
21 entity named in the judgment to receive
22 restitution in the same manner as enforcing
23 monetary judgments. The restitution judgment
24 does not expire until paid in full and is deemed

1 to be a criminal penalty for the purposes of a
2 federal bankruptcy involving the child,

3 d. order the child to pay the fine which would have been
4 imposed had such child been convicted of such crime as
5 an adult. Any such fine collected pursuant to this
6 paragraph shall be deposited in a special Work
7 Restitution Fund to be established by the court to
8 allow children otherwise unable to pay restitution to
9 work in community service projects in the private or
10 public sector to earn money to compensate their
11 victims,

12 e. order the cancellation or denial of driving privileges
13 as provided by Sections 6-107.1 and 6-107.2 of Title
14 47 of the Oklahoma Statutes,

15 f. sanction detention in the residence of the child or
16 facility designated by the Office of Juvenile Affairs
17 or the juvenile bureau for such purpose for up to five
18 (5) days, order weekend detention in a place other
19 than a juvenile detention facility or shelter,
20 tracking, or house arrest with electronic monitoring,
21 and

22 g. impose consequences, including detention as provided
23 for in subparagraph f of this paragraph, for
24 postadjudicatory violations of probation;

1 8. The court may order the child to participate in the Juvenile
2 Drug Court Program;

3 9. The court may dismiss the petition or otherwise terminate
4 its jurisdiction at any time for good cause shown; and

5 10. In any dispositional order removing a child from the home
6 of the child, the court shall, in addition to the findings required
7 by Section 2-2-105 of this title, make a determination that, in
8 accordance with the best interests of the child and the protection
9 of the public, reasonable efforts have been made to provide for the
10 return of the child to the home of the child, or that efforts to
11 reunite the family are not required as provided in Section 2-2-105
12 of this title, and reasonable efforts are being made to finalize an
13 alternate permanent placement for the child.

14 B. Prior to adjudication or as directed by a law enforcement
15 subpoena or court order, a school district may disclose educational
16 records to the court or juvenile justice system for purposes of
17 determining the ability of the juvenile justice system to
18 effectively serve a child. Any disclosure of educational records
19 shall be in accordance with the requirements of the Family
20 Educational Rights and Privacy Act of 1974 (FERPA). If the parent,
21 guardian, or custodian of a child adjudicated a delinquent child
22 asserts that the child has approval not to attend school pursuant to
23 Section 10-105 of Title 70 of the Oklahoma Statutes, the court or
24 the Office of Juvenile Affairs may require the parent to provide a

1 copy of the written, joint agreement to that effect between the
2 school administrator of the school district where the child attends
3 school and the parent, guardian, or custodian of the child.

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

11 D. No child who has been adjudicated in need of supervision may
12 be placed in a secure facility; provided, a child who has been
13 adjudicated in need of supervision and who has willfully violated a
14 valid court order as defined in and in compliance with the Juvenile
15 Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et
16 seq. may be placed in secure detention.

17 E. No child charged in a state or municipal court with a
18 violation of state or municipal traffic laws or ordinances, or
19 convicted therefor, may be incarcerated in jail for the violation
20 unless the charge for which the arrest was made would constitute a
21 felony if the child were an adult. Nothing contained in this
22 subsection shall prohibit the detention of a juvenile for traffic-
23 related offenses prior to the filing of a petition in the district
24 court alleging delinquency as a result of the acts and nothing

1 contained in this section shall prohibit detaining a juvenile
2 pursuant to Section 2-2-102 of this title.

3 F. The court may revoke or modify a disposition order and may
4 order redispotion. The child whose disposition is being
5 considered for revocation or modification at said hearing shall be
6 afforded the following rights:

7 1. Notice by the filing of a motion for redispotion by the
8 district attorney. The motion shall be served on the child and the
9 parent or legal guardian of the child at least five (5) business
10 days prior to the hearing;

11 2. The proceedings shall be heard without a jury and shall
12 require establishment of the facts alleged by a preponderance of the
13 evidence;

14 3. During the proceeding, the child shall have the right to be
15 represented by counsel, to present evidence, and to confront any
16 witness testifying against the child;

17 4. Any modification, revocation or redispotion removing the
18 child from the physical custody of a parent or guardian shall be
19 subject to review on appeal, as in other appeals of delinquent
20 cases;

21 5. If the child is placed in secure detention, bail may be
22 allowed pending appeal; and

23 6. The court shall not enter an order removing the child from
24 the custody of a parent or legal guardian pursuant to this section

1 unless the court first finds that reasonable efforts have been made
2 to maintain the family unit and prevent the unnecessary removal of
3 the child from the home of the child or that an emergency exists
4 which threatens the safety of the child and that:

- 5 a. such removal is necessary to protect the public,
- 6 b. the child is likely to sustain harm if not immediately
7 removed from the home,
- 8 c. allowing the child to remain in the home is contrary
9 to the welfare of the child, or
- 10 d. immediate placement of the child is in the best
11 interests of the child.

12 The court shall state in the record that such considerations
13 have been made. Nothing in this section shall be interpreted to
14 limit the authority or discretion of the agency providing probation
15 supervision services to modify the terms of probation including, but
16 not limited to, curfews, imposing community service, or any
17 nondetention consequences.

18 G. Any arrest or detention under the Oklahoma Juvenile Code or
19 any adjudication in a juvenile proceeding shall not be considered an
20 arrest, detention or conviction for purposes of employment, civil
21 rights, or any statute, regulation, license, questionnaire,
22 application, or any other public or private purposes, unless
23 otherwise provided by law.

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1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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