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CHILDREN — DEPENDENT AND DELINQUENT —
DEFINITIONS:

OKLA. SESS. LAWS 1972, CH. 122.

During the second regular session of 1972, the Thirty-third Legislature of Oklahoma amended Okla. Stat. tit. 10, §§ 1101, 1102 (1971) and repealed ch. 226, § 2, Okla. Sess. Laws 1970, at 370-71, formerly codified as Okla. Stat. tit. 10, § 1101A (1971).¹ These amendments provide a reorganization of the statutory provisions dealing with delinquent, dependent and neglected children² and constitute a significant change in the definition of the term "delinquent child."³

Prior to the 1972 amendments, the Oklahoma statutes defined a "delinquent child" as "any male person under the age of sixteen (16) years and any female under the age of eighteen (18) years who has violated any federal or state law or municipal ordinance, excepting a traffic statute or ordinance, or any lawful order of the court made under this act"⁴ The discriminatory nature of this definition was declared unconstitutional in the recent case of *Lamb v. Brown*.⁵ In *Lamb* the Tenth Circuit Court of Appeals held that the "disparity of treatment between 16-18 year old males and 16-18 year old females"⁶ caused by the definition of a "delinquent child" contained in Okla. Stat. tit. 10, § 1101(a) (1971) was violative of the equal protection clause of the fourteenth amendment to the United States Constitution.⁷

Prior to the enactment of the 1972 legislative amendments, the holding in *Lamb* forced the Oklahoma Supreme Court

¹ Ch. 122, §§ 1-5, Okla. Sess. Laws 1972, at 143-44.

² OKLA. STAT. tit. 10, §§ 1101-1506 (1971).

³ Ch. 122, § 1, Okla. Sess. Laws 1972, at 143.

⁴ Ch. 226, § 2, Okla. Sess. Laws 1970, at 370-71; Ch. 86, § 1, Okla. Sess. Laws 1970, at 108.

⁵ 456 F.2d 18 (10th Cir. 1972).

⁶ *Id.* at 20.

⁷ *Id.*

to resort to Okla. Stat. tit. 21, § 152 (1971) for an operative definition of a "delinquent child."⁸ This statute, originally enacted in 1910, provides in part:

All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven years.
2. Children over the age of seven years, but under the age of fourteen years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

...⁹

While recognizing that the consequences of enforcing this statute are contrary to modern principles of juvenile justice,¹⁰ the Oklahoma Court, in the case of *Schaffer v. Green*,¹¹ reluctantly concluded that in the absence of alternative legislation all persons over the age of fourteen years were adults and subject to the adult criminal code.¹²

The unconscionable situation caused by the *Lamb* and *Schaffer* decisions was resolved by the passage of the 1972 amendments¹³ to Okla. Stat. tit. 10, § 1101 (1971) and the repeal¹⁴ of Okla. Stat. tit. 10, § 1101A (1971). In order to eliminate the unconstitutional sexual discrimination of the previous statutes, the Oklahoma Legislature defined the term "child" as "any person under the age of eighteen (18) years"¹⁵

⁸ *Schaffer v. Green*, 496 P.2d 375 (Okla. Crim. App. 1972).

⁹ OKLA. STAT. tit. 21, § 152 (1971).

¹⁰ *Schaffer v. Green*, 496 P.2d 375, 377-78, 380 (Okla. Crim. App. 1972).

¹¹ 496 P.2d 375 (Okla. Crim. App. 1972).

¹² *Id.* at 378.

¹³ Ch. 122, § 1, Okla. Sess. Laws 1972, at 143-44.

¹⁴ Ch. 122, § 2, Okla. Sess. Laws 1972, at 144.

¹⁵ Ch. 122, § 1, Okla. Sess. Laws 1972, at 143.

and used this term in the definition of a "delinquent child."¹⁶ The amendment allows sixteen and seventeen year old males, suspected of violating a state law or municipal ordinance, to be tried under the provisions of the juvenile delinquency code¹⁷ rather than the adult criminal code as required by the judicial exhumation of Okla. Stat. tit. 21, § 152 (1971). Consequently, this group of males will be spared the numerous legal disabilities¹⁸ and social stigma which follow an adjudication of guilt for a felony under the adult criminal code.

The amendment¹⁹ to Okla. Stat. tit. 10, § 1102 (1971) allows the district court to retain jurisdiction over a delinquent child, whether male or female, until the age of twenty-one, while the previous statute set the ages at eighteen for females and twenty-one for males.²⁰

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¹⁶ The provision defining a "delinquent child" now reads as follows:

(b) The term 'delinquent child' means (1) a child who has violated any federal or state law or municipal ordinance, excepting a traffic statute or ordinance, or any lawful order of the court made under this act; or (2) a child who has habitually violated traffic laws or ordinances.

Id.

¹⁷ OKLA. STAT. tit. 10, § 1112(a) (1971).

¹⁸ OKLA. STAT. tit. 10, § 1127(b) (1971); which provides:

No adjudication by the court upon the status of a child shall operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall a child be deemed a criminal by reason of such adjudication, nor shall any adjudication in a juvenile proceeding be deemed a conviction, nor shall a child be charged with crime or convicted in any court, except as provided in this Act.

¹⁹ Ch. 122, § 3, Okla. Sess. Laws 1972, at 144.

²⁰ Ch. 282, § 102, Okla. Sess. Laws 1968, at 445.