

ENGROSSED HOUSE  
BILL NO. 1764

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( CRIMES AND PUNISHMENTS - CRIMINAL GANG VIOLENCE  
SUPPRESSION ACT - AMENDING SECTIONS IN TITLES  
21, 10, 47, 50, 63 AND 74 - CODIFICATION -  
EFFECTIVE DATE )

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 838.1 of Title 21, unless there  
is created a duplication in numbering, reads as follows:

Sections 1 through 4 of this act shall be known and may be cited  
as the "Criminal Gang Violence Suppression Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 838.2 of Title 21, unless there  
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Pattern of criminal gang activity" means the commission,  
attempted commission, or solicitation of two or more of the  
following offenses, provided at least one of those offenses occurred  
on or after September 1, 1992, and the last of those offenses

occurred within three (3) years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons in active participation with or as active members of a criminal gang:

- a. assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of Title 21 of the Oklahoma Statutes,
- b. aggravated assault and battery as defined by Section 646 of Title 21 of the Oklahoma Statutes,
- c. robbery by force or fear, as defined in Section 791 through 797 of Title 21 of the Oklahoma Statutes,
- d. robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 of Title 21 of the Oklahoma Statutes,
- e. unlawful homicide or manslaughter, as defined in Sections 691 through 722 of Title 21 of the Oklahoma Statutes,
- f. the sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled dangerous substances, as defined in Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,
- g. trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act,
- h. arson, as defined in Sections 1401 through 1403 of Title 21 of the Oklahoma Statutes,
- i. the influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of Title 21 of the Oklahoma Statutes,
- j. criminal gang intimidation, as defined by Section 3 of this act,
- k. theft of any vehicle, as described in Section 1720 of Title 21 of the Oklahoma Statutes,

- l. rape, as defined in Section 1111 of Title 21 of the Oklahoma Statutes,
- m. extortion, as defined in Section 1481 of Title 21 of the Oklahoma Statutes,
- n. transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of Title 21 of the Oklahoma Statutes,
- o. transporting a weapon in, or discharging a weapon from, a boat, in violation of Section 1289.14 of Title 21 of the Oklahoma Statutes,
- p. possession of a concealed weapon, as defined by Section 1289.8 of Title 21 of the Oklahoma Statutes, or
- q. shooting or discharging a firearm, as defined by Section 652 of Title 21 of the Oklahoma Statutes;

2. "Criminal gang" means any ongoing organization, association, or group of five or more persons that specifically either promotes, sponsors, or assists in, or participates in, and requires as a condition of membership or continued membership, the commission of one or more of the criminal acts enumerated in subparagraphs a through q of paragraph 1 of this section;

3. "Gang violence prosecution" means:

- a. vertical prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance in a gang-related case will perform all subsequent court appearances on that particular case through its conclusion, including the sentencing phase,
- b. assignment of highly qualified investigators and prosecutors to gang-related cases,
- c. significant reduction of caseloads for investigators and prosecutors assigned to gang-related cases, and

- d. measures taken in coordination with law enforcement agencies to protect cooperating witnesses from intimidation or retribution at the hands of gang members or associates.

Gang violence prosecution includes both criminal prosecutions and delinquency proceedings in the juvenile division of the district court; and

4. "Gang-related" means that the suspect or the victim of the crime is a known member of a criminal gang.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 838.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who threatens another person with force or violence, accompanied by apparent power of execution, with intent to harm the person or the property of the person, or any other person or the property of another person because the other person:

1. Refuses to join a criminal gang;
  2. Has withdrawn from a criminal gang; or
  3. Refuses to commit a criminal act in participation with or as a member of a criminal gang,
- commits criminal gang intimidation.

B. Any person convicted of violating the provisions of subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than five (5) years, or by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 838.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. An individual shall be subject to gang violence prosecution efforts if the individual is:

1. Under arrest for the commission or the attempted commission of any gang-related violent crime;

2. A known member of a criminal gang; and

3. Has exhibited a prior pattern of criminal gang activity.

B. Any person who knowingly and intentionally promotes, furthers, or assists in any felonious criminal conduct by members of a criminal gang shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not to exceed three (3) years.

C. Any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punishable by imprisonment in the State Penitentiary for a term not to exceed three (3) years.

D. Notwithstanding any other provision of law, the court may withhold from imposing the additional punishment provided for by subsection C of this section in an exceptional case where the interests of justice would best be served by such withholding, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by such disposition.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 652, is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, ~~is punishable~~ shall upon conviction be punished by imprisonment in the ~~penitentiary~~ State Penitentiary not exceeding life.

B. Every person who intentionally and wrongfully discharges any kind of firearm from a vehicle, with intent to injure any person or in any manner likely to produce injury, shall upon conviction be punished by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, ~~is punishable~~ shall upon conviction be punished by imprisonment in the ~~penitentiary~~ State Penitentiary not exceeding twenty (20) years.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1112, is amended to read as follows:

Section 1112. ~~(a)~~ A. Except as otherwise provided, a child who is charged with having violated any state statute or municipal ordinance other than those enumerated in Section 1104.2 of this title, shall not be tried in a criminal action but in a juvenile proceeding. If, during the pendency of a criminal or quasi-criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court or municipal court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the district court. The division making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division. However, nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.

~~(b)~~ B. Except as otherwise provided by law, if a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult, the court on its own motion or at the request of the district attorney shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine the prospects for reasonable rehabilitation of the child if he should be found to have committed the alleged act or omission.

Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;

3. The sophistication and maturity of the juvenile and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

4. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;

5. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court;  
and

6. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children; and

7. Whether or not the offense occurred while the juvenile was a member of a criminal gang, as that term is defined by Section 2 of this act, and the offense was committed in active participation with a criminal gang.

After such investigation and hearing, the court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify that such child shall be held accountable for his acts as if he were an adult and shall be held for proper criminal proceedings for the specific offense charged, by any other division of the court which would have trial jurisdiction of such offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of such certification, unless stayed pending appeal, the court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

~~(e)~~ C. Prior to the entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, said child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting

trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of adjudication, the child becomes eighteen (18) years of age, the child may be detained in a county jail or released on bail.

~~(d)~~ D. Any child who has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings.

~~(e)~~ E. An order either certifying a person as a child pursuant to subsection ~~(b)~~ B of this section or denying such certification shall be a final order, appealable when entered.

SECTION 7. AMENDATORY 50 O.S. 1991, Section 16, is amended to read as follows:

Section 16. Cities and towns in this state shall have the right and power to determine what is and what shall constitute a nuisance within their respective corporate limits, and for the protection of the public health, the public safety, the public parks and the public water supply, shall have such power outside of the corporate limits; and wherever it is practical so to do, said cities and towns shall have the power summarily to abate any such nuisance after notice to the owner, and an opportunity for him to be heard, if this can be given.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 150.9, is amended to read as follows:

Section 150.9 A. The Oklahoma State Bureau of Investigation shall procure and file for record, photographs, descriptions, fingerprints, measurements and other pertinent information relating

to all persons who have been convicted of a felony within the state ~~and,~~ of all well-known and habitual criminals and persons known to be members of a criminal gang, as that term is defined by Section 2 of this act, and it shall be the duty of the persons in charge of any state institution to furnish such data upon the request of the Director of the Bureau. The Oklahoma State Bureau of Investigation shall cooperate with and assist the sheriffs, chiefs of police and other law enforcement officers of the state in the establishment of a complete system of criminal identification, and shall file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory or penitentiary on felony charges, and any other pertinent information concerning such persons as it may from time to time receive from the law enforcement officers of this and other states.

B. The Oklahoma Department of Consumer Credit, the Oklahoma State Insurance Commission, the Oklahoma Horse Racing Commission, or any other state agency, board, department or commission requesting an analysis of fingerprints for licensing purposes by the Bureau on any person shall pay a fee of Forty-one Dollars (\$41.00) to the Bureau for each such investigation.

C. An owner or administrator of a child care facility requesting a criminal history investigation of an applicant for employment shall pay a Ten Dollar (\$10.00) fee to the Bureau for each such investigation. Whenever such request includes an analysis of fingerprints, the fee shall be Forty-one Dollars (\$41.00).

SECTION 9. AMENDATORY 21 O.S. 1991, Section 1369, is amended to read as follows:

Section 1369. The term "explosives" as used in this act shall be deemed to mean any chemical compound or mechanical mixture that is commonly used or which is intended for the purpose of producing an explosion and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities, or packing

that an ignition by fire, by friction, by concussion, by percussion, by chemical reaction, or by detonation of any part of the compound or mixture may cause ~~such a sudden generation of highly heated gases that the resultant~~ gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. Provided, that dynamite, nitroglycerin, gunpowder, blasting powder and trinitrotoluene shall be deemed explosives without further proof of their explosive nature.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 1767.3, is amended to read as follows:

Section 1767.3 As used in Section 1767.1 of Title 21 of the Oklahoma Statutes:

1. "Explosive" or "explosives" ~~mean~~ means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; i.e., with substantial instantaneous release of gas ~~and~~ and/or heat, unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term "explosives" shall include all material which is classified as explosives by the United States Department of Transportation.

2. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

3. "Incendiary device" means any chemical compound, mixture or device, the primary purpose of which is to ignite on impact or as a result of chemical reaction such as a "Molotov cocktail" or "firebomb" which is ignited on impact, causing a mechanical reaction of the container's breaking and permitting the inflammable matter to spread or splatter and is ignited from the burning wick or hypergolic reaction of chemicals.

4. "Component parts" means separate parts which if assembled would form an explosive device. Component parts of an "incendiary device" shall consist of an inflammable material, a breakable container and a source of ignition.

5. "Simulated bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, a destructive device or explosive as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive.

SECTION 11. AMENDATORY 47 O.S. 1991, Section 1-117, is amended to read as follows:

Section 1-117. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas ~~and~~ and/or heat, unless such compound, mixture, or device is otherwise specifically classified by the Interstate Commerce Commission. The term "explosives" shall include all material which is classified as Class A, Class B and Class C explosives by the Interstate Commerce Commission, and includes but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonant fuse, instantaneous fuse, ignitor cord, igniters, and some special fireworks. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 141.1, is amended to read as follows:

Section 141.1 A. "Explosive" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas ~~and~~ and/or heat, unless such compound, mixture or device is otherwise specifically classified by the United States

Department of Transportation. The term "explosive" shall include all material which is classified as explosive by the United States Department of Transportation.

B. "Blasting agent" means any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a test blasting cap containing two (2) grams of a mixture eighty percent (80%) mercury fulminate and twenty percent (20%) potassium chlorate, or a cap of equivalent strength.

C. The term "explosive" or "blasting agent" shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder.

D. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

SECTION 13. This act shall become effective September 1, 1992.

Passed the House of Representatives the 9th day of March, 1992.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate