

ENROLLED SENATE
BILL NO. 587

BY: LEFTWICH, LONG (Lewis),
WILKERSON, FAIR, MICKLE,
HELTON, LONG (Ed),
HARRISON, TAYLOR, HERBERT,
EASLEY and COLE of the
SENATE

and

HAMILTON (Jeff), BASTIN,
BRYANT, CALDWELL, COLEMAN,
COX, GREENWOOD, HENSHAW,
HUTCHCROFT, ISAAC, JOHNSON
(Rob), KEY, PAULK, PELTIER,
POPE, SEIKEL, VAUGHN (Ray),
WEBB and WEESE of the HOUSE

AN ACT RELATING TO CRIMES AND PUNISHMENTS,
CHILDREN AND EXPLOSIVES; AMENDING 10 O.S. 1991,
SECTION 1104.2 AND 21 O.S. 1991, SECTION 652,
WHICH RELATE TO REVERSE CERTIFICATION AND
SHOOTING OR DISCHARGING FIREARMS WITH INTENT TO
KILL; PROHIBITING SHOOTING OR DISCHARGING CERTAIN
WEAPONS FROM VEHICLE; PROVIDING PENALTY;
MODIFYING LANGUAGE; MAKING DISCHARGING CERTAIN
WEAPONS FROM A VEHICLE AND INTIMIDATION OF A
WITNESS GROUNDS FOR REVERSE CERTIFICATION OF
JUVENILES; AMENDING 21 O.S. 1991, SECTIONS 1369
AND 1767.3, 47 O.S. 1991, SECTION 1-117 AND 63
O.S. 1991, SECTION 141.1, WHICH RELATE TO
DEFINITIONS OF EXPLOSIVES; MODIFYING SUCH
DEFINITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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 uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons 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 2. AMENDATORY 10 O.S. 1991, Section 1104.2, is amended to read as follows:

Section 1104.2 A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the first degree, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, nonconsensual sodomy, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, shall be considered as an adult. Upon the arrest and detention, such sixteen- or seventeen-year-old accused shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

B. 1. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

C. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. 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 for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;
3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and
4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

D. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child to the juvenile division of the district court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

E. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection D of this section shall be a final order, appealable when entered.

SECTION 3. 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 combustive 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 4. 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 5. 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 6. 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 7. 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 Senate the 6th day of May, 1992.

President of the Senate

Passed the House of Representatives the 15th day of April, 1992.

Speaker of the House of Representatives