

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1764

BY: HUTCHCROFT, BASTIN,  
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AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; PROVIDING  
DEFINITIONS; PROHIBITING CERTAIN GANG ACTIVITIES;  
PROVIDING ENHANCED PENALTIES; PROVIDING COURT WITH  
CERTAIN DISCRETION; EXEMPTING CERTAIN INDIVIDUALS  
AND ORGANIZATIONS FROM THE ACT; AMENDING 10 O.S.  
1991, SECTION 1112, WHICH RELATES TO CHILDREN  
CHARGED WITH STATUTE VIOLATIONS; PROVIDING  
ADDITIONAL ADULT CERTIFICATION CONSIDERATION;  
PROVIDING FOR CODIFICATION; AND PROVIDING AN  
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 838.2 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  
after the effective date of this act 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:

- a. assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Sections 645 and 646 of Title 21 of the Oklahoma Statutes,
- b. robbery, as defined in Section 791 et seq. of Title 21 of the Oklahoma Statutes,
- c. unlawful homicide or manslaughter, as defined in Chapter 24 of Title 21 of the Oklahoma Statutes,
- d. 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,
- e. arson, as defined in Section 1401 of Title 21 of the Oklahoma Statutes,
- f. the influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of Title 21 of the Oklahoma Statutes,
- g. theft of any vehicle, as described in Section 1720 of Title 21 of the Oklahoma Statutes,
- h. rape, as defined in Section 1111 of Title 21 of the Oklahoma Statutes,
- i. extortion, as defined in Section 1481 of Title 21 of the Oklahoma Statutes,
- j. firing a weapon from a vehicle.

2. "Criminal street gang" means any ongoing organization, association, or group of three or more persons whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subparagraphs a through j of paragraph 1 of this section. The group shall have a

common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

SECTION 2. 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:

A. Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one (1) year, or by imprisonment in the State Penitentiary for one (1), two (2), or three (3) years.

B. 1. Except as provided in paragraph 2 of this subsection, 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 street 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 punished by an additional term of one (1), two (2), or three (3) years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

2. Any person who violates this subsection in the commission of a felony punishable by imprisonment in the State Penitentiary for life, shall not be paroled until a minimum of fifteen (15) calendar years have been served.

C. Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of,

at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one (1) year, or by imprisonment in the State Penitentiary for one (1), two (2), or three (3) years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one (1) year, but not less than one hundred eighty (180) days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served one hundred eighty (180) days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve one hundred eighty (180) days in the county jail.

D. Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specified on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

E. This section shall not apply to employees engaged in concerted activities for their mutual aid and protection or the activities of labor organizations or their members or agents.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1112, is amended to read as follows:

Section 1112. (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) 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 in active participation with a criminal street 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.

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

SECTION 4. This act shall become effective September 1, 1992.

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