

SHORT TITLE: Juveniles; making all felony crimes reverse certification crimes and lowering age limitations; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1023

By: Kerr

AS INTRODUCED

An Act relating to juveniles; amending 10 O.S. 1991, Section 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1104.2) and 21 O.S. 1991, Section 856, as last amended by Section 1, Chapter 212, O.S.L. 1993 (21 O.S. Supp. 1993, Section 856), which relate to reverse certification of juveniles and contributing to the delinquency of minors; making all felony crimes reverse certification crimes and lowering age limitations; enhancing penalty for contributing to delinquency of certain minors; modifying statutory reference; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1104.2, as last amended by Section 4, Chapter 342, O.S.L. 1993 (10 O.S. Supp. 1993, Section 1104.2), is amended to read as follows:

Section 1104.2 A. Any person thirteen (13), fourteen (14), fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with ~~murder, kidnapping, robbery with a dangerous weapon, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree after three or more adjudications for committing either~~

~~burglary in the first degree or burglary in the second degree, 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,~~ any felony offense shall be considered as an adult. Upon the arrest and detention, such thirteen-, fourteen-, fifteen-, 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 2. AMENDATORY 21 O.S. 1991, Section 856, as last amended by Section 1, Chapter 212, O.S.L. 1993 (21 O.S. Supp. 1993, Section 856), is amended to read as follows:

Section 856. A. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a delinquent child, upon conviction, shall, for the first offense, be guilty of a misdemeanor and punishable by imprisonment in a county jail not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

B. Every person convicted of a second or any succeeding violation of this act shall be guilty of a felony and punishable by

imprisonment in the State Penitentiary not to exceed three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet or encourage a minor to commit or participate in committing an act that would be a felony if committed by an adult shall, upon conviction, be guilty of a felony punishable by the maximum penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted or encouraged the minor to commit or participate in committing.

D. In addition to the penalty specified in subsection C of this section, any person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet or encourage a minor under thirteen (13) years of age to commit or participate in committing an act that would be a felony if committed by an adult shall, upon conviction, be punishable by a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00).

E. Every person who shall knowingly or willfully cause, aid, abet, encourage, solicit or recruit a minor to participate, join, or associate with any criminal street gang, as defined by subsection ~~F~~ G of this section, or any gang member for the purpose of committing any criminal act shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not to exceed one (1) year, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both such fine and imprisonment.

~~E.~~ F. Every person convicted of a second or subsequent violation of subsection ~~D~~ E of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not to exceed five (5) years or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

~~F.~~ G. "Criminal street 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 following criminal acts:

1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of this title;

2. Aggravated assault and battery as defined by Section 646 of this title;

3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;

4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 of this title;

5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of this title;

6. 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;

7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-414 of Title 63 of the Oklahoma Statutes;

8. Arson, as defined in Sections 1401 through 1403 of this title;

9. The influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of this title;

10. Theft of any vehicle, as described in Section 1720 of this title;

11. Rape, as defined in Section 1111 of this title;

12. Extortion, as defined in Section 1481 of this title;

13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of this title;

14. Transporting a weapon in, or discharging a weapon from, a boat, in violation of Section ~~1289.14~~ 4210.3 of ~~this title~~ Title 63 of the Oklahoma Statutes;

15. Possession of a concealed weapon, as defined by Section 1289.8 of this title; or

16. Shooting or discharging a firearm, as defined by Section 652 of this title.

SECTION 3. 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.

44-2-1484

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