

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1731

By: Williams

AS INTRODUCED

An Act relating to children and crimes and punishments; amending 10 O.S. 1991, Section 1104.2, as amended by Section 2, Chapter 192, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1104.2), which relates to reverse certification; removing age limitation on such certification; amending 21 O.S. 1991, Section 51, which relates to punishment enhancement; authorizing such enhancement on certain adjudication; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1104.2, as amended by Section 2, Chapter 192, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1104.2), is amended to read as follows:

Section 1104.2 A. Any ~~person sixteen (16) or seventeen (17) years of age~~ child 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~~ child 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~~ available to the court for future sentence enhancement purposes pursuant to Section 51 of Title 21 of the Oklahoma Statutes.

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 51, is amended to read as follows:

Section 51. A. ~~Except~~ Unless otherwise prohibited by the state or federal constitution, and except as otherwise provided in Sections 1 through 7 of this act, every person who, having been convicted of any offense punishable by imprisonment in the State Penitentiary or having been certified as a child and adjudicated as delinquent after having gone through reverse certification procedures for committing any of the offenses listed in Section 1104.2 of Title 10 of the Oklahoma Statutes, and having been adjudicated delinquent for having committed such offense, commits any crime after such conviction or adjudication is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the State Penitentiary for any term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term not less than ten (10) years.

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the State Penitentiary for five (5) years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

3. If such subsequent conviction is for petit larceny, the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years.

B. Every person who, having been twice convicted of felony offenses, commits a third, or thereafter, felony offenses within ten (10) years of the date following the completion of the execution of the sentence, shall be punished by imprisonment in the State Penitentiary for a term of not less than twenty (20) years. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

SECTION 3. This act shall become effective September 1, 1993.

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